

United States
Circuit Court of Appeals
For the Ninth Circuit. 4-

JOSEPH PABLO,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of the
District of Montana.

Filed

NOV 1 1910

F. B. Montgomery

United States
Circuit Court of Appeals
For the Ninth Circuit.

JOSEPH PABLO,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of the
District of Montana.

INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Answer of Court to Writ of Error.....	113
Appearance Bond on Writ of Error.....	108
Arraignment and Plea.....	7
Assignment of Errors.....	101
Attorneys of Record, Names and Addresses of..	1
Attorneys of Record, Names and Addresses of..	11
Bench Warrant.....	5
Bill of Exceptions.....	11
Certificate of Clerk U. S. District Court to Trans- cript of Record.....	115
Certificate to Judgment-roll.....	10
Citation on Writ of Error.....	114
Indictment.....	2
Indictment.....	12
Instructions of Court to Jury.....	86
Instructions Requested by Defendant.....	84
Judgment.....	9
Motion for New Trial.....	97
Motion in Arrest of Judgment.....	95
Names and Addresses of Attorneys of Record..	1
Names and Addresses of Attorneys of Record..	11
Order Allowing Writ of Error.....	107
Order Settling and Allowing Bill of Exceptions.	99

Index.	Page
Petition for Writ of Error.....	105
Return on Service of Writ.....	6
TESTIMONY ON BEHALF OF PLAINTIFF:	
GILBEAU, ANDREW.....	39
Cross-examination.....	41
HAYNES, R. E.....	43
Cross-examination.....	43
HOLLAND, R. J.....	36
Cross-examination.....	37
HUNTER, CHARLES.....	15
Cross-examination.....	21
Redirect Examination.....	25
Recross-examination.....	26
Redirect Examination.....	26
KIRKPATRICK, FRANK.....	37
Cross-examination.....	38
In Rebuttal.....	83
KIRKPATRICK, LUCY.....	38
Cross-examination.....	39
MATT, HENRY.....	34
Cross-examination.....	36
PRITCHETT, HARRY (In Rebuttal).....	80
Cross-examination.....	82
PRITCHETT, LAWRENCE.....	30
Cross-examination.....	33
Recalled.....	45
RAMSEY, J. W.....	43
Cross-examination.....	45
STEVENS, CHARLES.....	27
Cross-examination.....	29
Redirect Examination.....	30

Index.

Page

TESTIMONY ON BEHALF OF DEFEND-
ANT:

COUTURE, MRS. OCTAVE.....	76
Cross-examination.....	77
GRANT, ARCHIE.....	77
Cross-examination.....	78
HULL, PHILIP.....	61
Cross-examination.....	64
Redirect Examination.....	68
Recross-examination....	68
KIRKPATRICK, FRANK....	78
Cross-examination.....	78
KIRKPATRICK, MRS. LUCY.....	74
Cross-examination.....	75
Redirect Examination.....	76
MONG.....	59
Cross-examination.....	59
PABLO, JOE.....	45
Cross-examination.....	52
Redirect Examination.....	57
Recross-examination....	58
Recalled.....	79
In Surrebuttal.....	84
PABLO, MRS. JOE.....	72
Cross-examination.....	73
Redirect Examination.....	73
Recross-examination....	74
PABLO, MRS. LOUIS.....	79
THOMPSON, P. C.....	70
Cross-examination.....	71
Redirect Examination.....	71
Recross-examination....	72

Index.	Page
TESTIMONY ON BEHALF OF DEFEND- ANT—Continued:	
YAECK, R. H.....	68
Cross-examination.....	70
Verdict.....	8
Verdict.....	95
Writ of Error.....	111

Names and Addresses of Attorneys of Record.

B. K. WHEELER, Esq., U. S. Attorney, of Butte,
Montana;

HOMER G. MURPHY, Esq., Assistant U. S. Attorney,
of Helena, Montana;

FRANK WOODY, Esq., Assistant U. S. Attorney,
of Butte, Montana;

Attorneys for Plaintiff and Defendant in
Error.

ALBERT BESANCON, Esq., of Missoula, Montana;

JOHN P. SWEE, Esq., of Ronan, Montana;

Attorneys for Defendant and Plaintiff in
Error. [1*]

*In the District Court of the United States in and for
the District of Montana.*

No. 2732.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

JOSEPH PABLO,
Defendant.

BE IT REMEMBERED, that on the 28th day of
October, A. D. 1915, the Grand Jury of said court pre-
sented an Indictment against the defendant herein,
in the words and figures following, to wit: [2]

*Page-number appearing at foot of page of original certified Trans-
script of Record.

Indictment.

United States of America,

District of Montana,—ss.

In the District Court of the United States within and for the District of Montana, of the September term of said District Court held at Butte, Silver Bow County, in said District of Montana, in the year of our Lord one thousand nine hundred and fifteen.

The grand jurors of the United States of America, duly impanelled, sworn and charged to inquire within and for the District of Montana, and true presentment make of all crimes and misdemeanors committed against the laws of the United States, within the State and District of Montana, upon their oaths and affirmations do find, charge and present:

That one Joseph Pablo, late of the State and District of Montana, on the 6th day of September, A. D. 1915, at and within the State and District of Montana, did then and there wrongfully unlawfully and feloniously introduce a large quantity of spirituous and intoxicating liquor, commonly called whiskey, in quantity about one quart, the exact quantity of which is to the grand jurors aforesaid unknown, into the Flathead Indian Reservation, within the state and district of Montana, the said Flathead Indian Reservation then and there being an Indian country, under the charge of Fred C. Morgan, then and there the superintendent and special disbursing agent in charge of the said Flathead Indian Reservation; contrary to the form of the statute in such case made and

provided, and against the peace and dignity of the United States of America.

SECOND COUNT.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge and present:

That the said Joseph Pablo, late of the State and District of Montana, on the 5th day of September, A. D. 1915, at and within [3] the State and District of Montana, did then and there wrongfully, unlawfully and feloniously introduce a large quantity of spirituous and intoxicating liquor, commonly called whiskey, in quantity about three quarts, the exact quantity of which is to the grand jurors aforesaid unknown, into the Flathead Indian Reservation, within the State and District of Montana, the said Flathead Indian Reservation then and there being an Indian country, under the charge of Fred C. Morgan, then and there the superintendent and special disbursing agent in charge of the said Flathead Indian Reservation; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

THIRD COUNT.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge and present:

That the said Joseph Pablo, late of the State and District of Montana, on the 5th day of October, A. D. 1915, at and within the State and District of Montana, did then and there wrongfully, unlawfully and feloniously introduce a large quantity of spirituous

and intoxicating liquor, commonly called whiskey, in quantity about four quarts, the exact quantity of which is to the grand jurors aforesaid unknown, into the Flathead Indian Reservation, within the State and District of Montana, the said Flathead Indian Reservation then and there being an Indian country, under the charge of Fred C. Morgan, then and there the superintendent and special disbursing agent in charge of the said Flathead Indian Reservation; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

B. K. WHEELER,

United States Attorney, District of Montana.

HOMER G. MURPHY,

Assistant U. S. Attorney, District of Montana. [4]

[Indorsed]: No. 2732. United States District Court, District of Montana. United States of America vs. Joseph Pablo. Indictment, a True Bill. W. F. Noyes, Foreman of Grand Jury. B. K. Wheeler, U. S. Attorney, District of Montana. Homer G. Murphy, Assistant U. S. Attorney, District of Montana. Witnesses: John Lamoose, Henry Matt, John Matt, Harry Pritchett, Lucy Kirkpatrick, Napoleon Demontier, R. J. Holland, Harry Haines, Frank Kirkpatrick, Lawrence Pritchett, Phil Hull, Chas. Stevenson, Chas. Hunter, Andrew Gilbeau, J. W. Ramsey, Octave Couture. Presented by the Grand Jury in Open Court, by their Foreman, in Their Presence, and filed this 28th day of Oct. A. D. 1915. Geo. W. Sproule, Clerk.

Thereafter, on March 7, 1916, a Bench Warrant for said defendant was duly issued, in the words and figures following, to wit: [5]

Bench Warrant.

United States of America,
District of Montana,—ss.

To the Marshal of the United States of America, for the District of Montana, and his Deputies, or any or either of them, Greeting:

WHEREAS, at a District Court of the United States of America, for the District of Montana, begun and held at the city of Butte within and for the District aforesaid, on the 28th day of October, in the year of our Lord one thousand nine hundred and fifteen, the Grand Jurors in and for the said District, brought into the said court a true bill of indictment against Joseph Pablo for violation of section 2139 as amended, as by the said indictment, now remaining on file and of record in said court, will more fully appear; to which Indictment the said Joseph Pablo has not yet appeared or pleaded:

NOW, THEREFORE, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said Joseph Pablo and him bring before the said Court, at the United States District courtroom, in the Federal Building at ————, Montana, to answer the Indictment aforesaid.

WITNESS, the honorable GEO. M. BOURQUIN, Judge of the United States District Court, for the District of Montana, and the seal of said District

Court, this 7th day of March, in the year of our Lord one thousand nine hundred and sixteen and of our Independence the 140.

[Seal]

GEO W. SPROULE,
Clerk.

[Endorsed]: No. 2732. United States District Court, District of Montana. United States of America vs. Joseph Pablo. Bench Warrant. Bail Fixed at \$250. Filed Mar. 11th, 1916. Geo. W. Sproule, Clerk. [6]

Return on Service of Writ.

United States of America,
District of Montana,—ss.

I hereby certify and return that I executed the within warrant by arresting the within-named Joseph Pablo on the 8th day of March, 1916, at Missoula, in Missoula County, State and District of Montana, that on the same day I conducted him before Wallace P. Smith, U. S. Commissioner at Missoula, Montana, who admitted him to bail to appear at Great Falls, Montana, March 14th, 1916, whereupon I released said Joseph Pablo.

JOSEPH L. ASBRIDGE,
U. S. Marshal.

By J. W. Rickman,
Deputy. [7]

Thereafter, on March 14th 1916, defendant was duly arraigned, pleaded not guilty and the case was set for trial, the journal entry thereof being as follows, to wit:

In the District Court of the United States, District of Montana.

No. 2732.

THE UNITED STATES

vs.

JOSEPH PABLO.

Arraignment and Plea.

Defendant with his attorney, John P. Swee, Esq., present in court, and being arraigned the defendant answered that his true name is Joseph Pablo; and thereupon indictment read to defendant; and thereupon defendant pleaded that he is not guilty and plea entered. Thereupon case set for trial at Missoula, April 13, 1916.

Entered in open court, March 14, 1916.

GEO. W. SPROULE,

Clerk. [8]

Thereafter, on April 14, 1916, the Verdict of the jury was duly filed herein, being in the words and figures following, to wit:

*In the District Court of the United States, District
of Montana.*

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH PABLO,

Defendant.

Verdict.

We, the jury in the above-entitled cause, find the defendant guilty in manner and form as charged in count three of the Indictment, and not guilty as to count one and two.

H. H. MONTGOMERY,

Foreman.

Filed April 14, 1916. Geo. W. Sproule, Clerk.
By C. R. Garlow, Deputy.

Thereafter, on April 17, 1916, Judgment was duly entered herein, in the words and figures following, to wit: [9]

*In the District Court of the United States, District
of Montana.*

No. 2732.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH PABLO,

Defendant.

Judgment.

The United States Attorney with the defendant and his counsel present in court.

The defendant was duly informed by the court of the nature of the charge against him, for the offense of unlawfully and feloniously introducing spirituous and intoxicating liquors into the Flathead Indian Reservation in the State and District of Montana, committed on the 5th day of October, 1915, at and within the State and District of Montana, as charged in count three of the indictment herein; and of his indictment, arraignment and plea of not guilty, and of his trial and the verdict of guilty as charged in said count three of said indictment.

And the defendant was then asked if he had any legal cause to show why judgment should not be pronounced against him, to which he replied that he had none, and no sufficient cause being shown or appearing to the Court, thereupon the Court rendered its judgment as follows, to wit:

That whereas, the said defendant having been duly convicted in this court of the offense of unlawfully and feloniously introducing spirituous and intoxicating liquors into the Flathead Indian Reservation in the State and District of Montana, committed on the 5th day of October, 1915, at and within the State and District of Montana, as charged in count three of the indictment herein;

It is therefore considered, ordered and adjudged that for said offense you, the said Joseph Pablo, be confined and imprisoned in the Missoula County Jail

at Missoula, Montana for the term of seventy-five days, and that you pay a fine of One Hundred Dollars, and costs taxed at Two Hundred Ninety-four and 10/100 Dollars, and be confined in said County Jail until said fine and costs are paid or you are otherwise discharged according to law.

Judgment rendered and entered this 17th day of April, 1916.

GEO. W. SPROULE,
Clerk.

ATTEST a true copy of Judgment:

GEO. W. SPROULE,
Clerk.

By C. R. Garlow,
Deputy Clerk. [10]

Certificate to Judgment-roll.

United States of America,
District of Montana,—ss.

I, Geo. W. Sproule, Clerk of the United States District Court for the District of Montana, do hereby certify that the foregoing papers hereto annexed, constitute the Judgment-Roll in the above-entitled action.

Witness my hand and the seal of said court at Missoula, Montana, this 17th day of April, A. D. 1916.

[Seal]

GEO. W. SPROULE,
Clerk.

[Indorsed]: Title of Court and Cause. Judgment-roll. Filed April 17, 1916. Geo. W. Sproule, Clerk. [11]

Thereafter, on June 30, 1916, defendant's Bill of Exceptions, as settled and allowed, was duly filed herein, in the words and figures following, to wit:
[12]

Names and Addresses of Attorneys of Record.

BURTON K. WHEELER, Esq., United States Attorney, HOMER G. MURPHY, Esq., Assistant United States Attorney, both of Butte, Montana,

Attorneys for the United States, Plaintiff.

ALBERT BESANCON, Esq., Missoula, Montana, JOHN P. SWEE, Esq., Ronan, Montana,

Attorneys for the Defendant. [17]

In the District Court of the United States, for the District of Montana.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH PABLO,

Defendant.

Bill of Exceptions.

BE IT REMEMBERED that heretofore, to wit, on the 28th day of October, 1915, there was presented and filed in this court an indictment against the defendant, which said indictment is in words and figures as follows, to wit:

Indictment.

United States of America,
District of Montana,—ss.

In the District Court of the United States, within and for the District of Montana, of the September term of said District Court held at Butte, Silver Bow County, in said District of Montana, in the year of our Lord one thousand nine hundred and fifteen.

The grand jurors of the United States of America, duly impaneled, sworn and charged to inquire within and for the District of Montana, and true presentment make of all crimes and misdemeanors committed against the laws of the United [18] States, within the State and District of Montana, upon their oaths and affirmations do find, charge and present:

That one Joseph Pablo, late of the State and District of Montana, on the 6th day of September, A. D. 1915, at and within the State and District of Montana, did then and there wrongfully, unlawfully and feloniously introduce a large quantity of spirituous and intoxicating liquor, commonly called whiskey, in quantity about one quart, the exact quantity of which is to the grand jurors aforesaid unknown, into the Flathead Indian Reservation, within the State and District of Montana, the said Flathead Indian Reservation then and there being an Indian country, under the charge of Fred C. Morgan, then and there the superintendent and special disbursing agent in charge of the said Flathead Indian Reservation; contrary to the form of the statute in such case made

and provided, and against the peace and dignity of the United States of America.

SECOND COUNT.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge and present:

That the said Joseph Pablo, late of the State and District of Montana, on the 5th day of September, A. D. 1915, at and within the State and District of Montana, did then and there wrongfully, unlawfully and feloniously introduce a large quantity of spirituous and intoxicating liquor, commonly called whiskey, in quantity [19] about three quarts, the exact quantity of which is to the grand jurors aforesaid unknown, into the Flathead Indian Reservation, within the State and District of Montana, the said Flathead Indian Reservation then and there being an Indian country, under the charge of Fred C. Morgan, then and there the superintendent and special disbursing agent in charge of the said Flathead Indian Reservation; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

THIRD COUNT.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge and present:

That the said Joseph Pablo, late of the State and District of Montana, on the 5th day of October, A. D. 1915, at and within the State and District of Montana, did then and there wrongfully, unlawfully and feloniously introduce a large quantity of spirituous

and intoxicating liquor, commonly called whiskey, in quantity about four quarts, the exact quantity of which is to the grand jurors aforesaid unknown, into the Flathead Indian Reservation, within the State and District of Montana, the said Flathead Indian Reservation then and there being an Indian country, under the charge of Fred C. Morgan, then and there the superintendent and special disbursing agent in charge of the said Flathead Indian Reservation; contrary to the form [20] of the statute in such case made and provided, and against the peace and dignity of the United States of America.

B. K. WHEELER,

United States Attorney, District of Montana.

[Endorsed]: No. —. United States District Court, District of Montana. United States of America vs. Joseph Pablo. Indictment: A True Bill. W. F. Noyes, Foreman of Grand Jury. B. K. Wheeler, United States Attorney. District of Montana. Homer G. Murphy, Asst. U. S. Atty., Dist. of Mont. Witnesses: John Lamoose, Henry Matt, Harry Pritchett, Lucy Kirkpatrick, Napoleon Demontier, R. J. Holland, Harry Haines, Frank Kirkpatrick, Lawrence Pritchett, Phil Hull, Chas. Stevenson, Chas. Hunter, Andrew Gilbeau, J. W. Ramsey, Octave Couture. Presented by the grand jury in open court by their foreman, in their presence, and filed this 28th day of October, A. D. 1915. Geo. W. Sproule, Clerk. By —————, Deputy.

And thereafter, on the 16th day of March, 1916, the defendant appeared in person and with his counsel and was arraigned and answered that his true

name was Joseph Pablo, and entered a plea of not guilty.

And thereafter, on the 13th day of April, 1916, this cause came on regularly for trial in the above-entitled court, before the Hon. George M. Bourquin, Judge presiding, when the following proceedings were had, to wit: A jury was impaneled and sworn to [21] try said cause, and thereupon B. K. Wheeler, Esq., United States Attorney, and Homer G. Murphy, Esq., Assistant United States Attorney, appearing on behalf of the plaintiff, Albert Besancon, Esq., and John P. Swee, Esq., appearing on behalf of the defendant, and thereupon the following testimony was introduced and offered on behalf of the United States, the plaintiff, and on behalf of the defendant, as follows, to wit:

Testimony of Charles Hunter, for Plaintiff.

CHARLES HUNTER, being called as a witness, and being about to be sworn on behalf of the plaintiff, Mr. Besancon stated:

At this time we object to the witness being sworn to testify in this case upon the ground that he is incompetent to testify, having been convicted in this court of a felony, and judgment having been passed upon him in the month of February, 1914.

By Mr. MURPHY.—If the Court please, I have here a telegram, pardoning the witness, and restoring him to citizenship.

By the COURT.—Well, they seem to have met the situation, Mr. Besancon.

By Mr. BESANCON.—Of course we cannot question the telegram, but still we object to its being re-

(Testimony of Charles Hunter.)

ceived as evidence until the pardon itself is produced.*

By the COURT.—The pardon is an act of the executive of the United States, and when it is brought into this court, it is entitled to judicial notice without any proof at all. Of course, when it [22] said the President has done a certain act, the Court must take notice of it. I think the telegram satisfies the Court, that it is so at this time. The objection will be overruled.

Exception taken by the defendant.

By the COURT.—As a matter of course, if there was any mistake, why, it would always be cause for setting aside a verdict, should there be one, or of any judgment; so no harm can be done in proceeding.

Thereupon CHARLES HUNTER was sworn as a witness on behalf of the Government, and testified as follows:

Direct Examination by Mr. MURPHY.

My name is Charles Hunter. I live in Washington at the present time. I am acquainted with the defendant Joseph Pablo and have known him for quite a good many years. I could not say just how long. In the fall of 1915 I was living at Arlee with Joe Pablo. I was in Missoula the first part of October of last year. I was working for Joe Pablo.

*It was stated by the District Attorney that the telegram was from the Department of Justice that the President had pardoned the witness, Hunter, and the Court read the telegram.—B.

(Testimony of Charles Hunter.)

I could not say just how long I did work for him—a month, anyway. It was along about the 25th of October when I was in Missoula. Somewhere along there. I couldn't recall the date exactly. I do not recall the time that Pablo was arrested; that is, I cannot remember the day, but I remember the fact that he was arrested. I was in Missoula a couple of days before he was arrested and left Missoula [23] about 11 o'clock in the morning with Joe Pablo, Philip Hull, Lawrence Pritchett, and Charlie Stevens. We left in an automobile. I came to town with Louis Pablo—no, it was not with Louis I came,—I forget now who I did come in with. I saw Joe Pablo in the morning before I left town with him. Saw him on the street. Lawrence Pritchett was with him then, and believe that Philip Hull was with him also. This was around on Higgins Avenue. Joe then said we would go out pretty quick. I don't remember that he said or did anything else just then. We did get something that day before we left town. We got whiskey. Seven dollars worth in all. There was two pints came from up here, the Frog Pond, they call it. This Frog Pond is over on West Front Street. When I got the whiskey at the Frog Pond Lawrence Prichett was with me. I paid two dollars for it. This was Joe Pablo's money. I got the money from Joe Pablo just a little while before I went there. Two dollars was the amount. I then got two pints and brought them to the car. The car was waiting for us there on Higgins Avenue. When I got to the car I put them in the hind seat. At that

(Testimony of Charles Hunter.)

time there was with me in the car Philip Hull, Joe Pablo, and Lawrence Pritchett. Charlie Stevens was not with us then. He got on here out of town. Just west of town. After that we went down around by the depot and up to the Montana Bar, where we got some whiskey, also three quarts and two pints of beer. I got this and paid five dollars for it. I got the money [24] from Joe—that he gave me by the corner at Schlossberg's. That was while we were at the machine, on the front step. At that time Lawrence Pritchett, myself, Louis Pablo and Charlie Stevens were present. The two pints that we got at the Montana Bar we put into the car in the hind seat, in the hind end; right in the car, inside of it and on the bottom of the car. At that time Joe was sitting in the front seat; Philip Hull was driving the car. Lawrence Pritchett was in the hind seat with me. We left town then. The car was going to Ronan on the Flathead Indian Reservation. When we started and as we were going along we were drinking a little. The car first stopped about three or four miles out of town. We had a bottle there. Phil Hull stopped the car. Somebody said to stop it. There was a bottle there. They said they had a bottle there and they stopped the car. We took the bottle. The car did not turn around or anything; it backed up. I could not say just how far it backed up. A bottle was obtained at that place. I don't remember who got it. It was put in the car. The contents of the bottle were whiskey. The kind of whiskey we bought in town that morning was Joel B. Fraser.

(Testimony of Charles Hunter.)

After we picked this bottle up on the road we went on. As we were driving along there was some drinking in the car. We were all drinking. We were all pretty near drunk. By all I mean myself, Lawrence Pritchett, Joe Pablo and Charlie Stevens. We were drinking whiskey from a pint bottle. I don't remember how many pints were drank. [25] We were drinking along the road there. These were the pint bottles that we got at the Frog Pond. I don't know how many times we drank out of the bottle—I couldn't say. More than once. As to the condition of the people in the car, Charlie Stevens was a little full. He was the only one that I know of. I was there. Charlie Stevens, Louis Pablo and Lawrence Pritchett were drinking. The car went out to Joe Pablo's place. Before that we went to Johnny Matt's place. There Charlie Stevens got out. At Johnny Matt's place there was some drinking. We all drank. By all, I mean Joe and Louis and Lawrence Pritchett and Charlie Stevens. I couldn't say whether Philip Hull was drinking that day or not. From there the car went to Octave Couture's. Stevens got out at Johnny Matt's place. We had a drink at Octave Couture's place—Octave Couture, Lawrence Pritchett, myself and Joe Pablo. After that we turned around and went back to Pritchett's place. Pritchett lives out of Arlee some place there. At Pritchett's Lawrence Pritchett got out there. The car then went to Joe Pablo's, about three miles the other side of Arlee. At Joe Pablo's place we stopped for dinner. I couldn't say what time we

(Testimony of Charles Hunter.)

got to Joe's place. We stayed there just about the time we ate dinner. I believe that I did have a drink there. When we got to Joe's place the bottles that were obtained at the Montana saloon or bar were in under the seat, the hind seat. I put them there. I put them there on the road four or five miles from Missoula. At Joe's place we took out [26] the bottles and then we got in the car and we put them back in again. I took them out of the car. When I got back in we had them up in front. I just took them out and then I put them back, in the front seat. When I got back in the car Joe Pablo, Phil Hull, myself, and Joe Pablo's wife and kids, were in the car. There were three children. I sat in the front seat with Philip Hull. Pablo sat in the hind seat with his wife. One of the children sat in the front seat and the other two in the back. From Pablo's the car went to Ronan. On the road between Joe's place and Ronan we met Louis Pablo. We met him on the other side of Ravalli. He was afoot. We picked him up. When we got to between Ronan and the Mission there was an automobile went up ahead of us and stopped, and a fellow got out there and held up his hand. Somebody says to keep going on; he says, "They are after us." Then we got out of the road a little and they tried to break the bottles. They told us to break the bottles. It was either Joe or Louis—it was from behind. I broke the bottles. Just took them in my hand and hit them together. After we got out of the road a little ways, out of the main road, we went toward a swamp

(Testimony of Charles Hunter.)

there. There was another road there. We turned off into this road. This side road went around a swamp. And then came back and turned around and went on. This road we took off to the side down the swamp was in the direction of Ronan. This was not toward the place we were going to. (Q.) How far on the traveled [27] road was that swamp, off of the main road? (A.) About two or three miles. I couldn't say who was giving directions to the car that we go down that road by the swamp. When this car came along it passed us in the same direction we were going in. They jumped out of the car; Andrew Gilbeau jumped out. He tried to stop us. He held up his hand and took out his gun and tried to shoot at the car. He started to shoot when we tried to get away. We were not then on the main road. We were just turning off when he started to shoot. I did not know who Gilbeau was at that time. There was no little wagon track where we turned off, not right there, but we got into one a few feet, about ten yards away; and between the main road and the wagon track which we got into about ten yards away the ground was just level—smooth ground. This was four or five miles toward the Mission from Ronan. Whiskey was in the bottles which I broke. They were bottles with whiskey in them.

Cross-examination by Mr. BESANCON.

I stayed at Arlee at this time. No, I am now in Washington. I lived at Arlee quite a while. I was up at Ronan for a while, too. While at Ronan or

(Testimony of Charles Hunter.)

at Arlee I was working for Joe Pablo. Not all the time—I was working for his brother Louis awhile. It is a fact that for a long time before this occurrence [28] that I have testified to that I worked for one of the Pablos, and that it was for the sister. I worked for Joe at the time I got hired from Joe Pablo's. I was hired from Joe Pablo's place. I don't remember if I had worked any before that, or not. In direct examination I said that in the fall of 1915 I lived in Arlee. I said I was at Arlee at the time. I was working for the sister up near Ronan before this. The two dollars that I said Joe gave me—it was down here by Smith's Frog Pond on Front Street. At that time Lawrence Pritchett, Joe Pablo, myself and Phil Hull were there. It was two silver dollars. From there I went to the Frog Pond with Lawrence Pritchett. Joe was not in front of the Frog Pond on West Front Street. When we came back we found him on Higgins Avenue, some place, I don't remember just where. We all got in the car down here by the corner at Schlossberg's. From there we went around by the Montana Bar; just drove down there, and somebody said stop. I don't remember who it was. I don't remember whether I said stop. We stopped, and Lawrence Pritchett and I went into the Montana Bar and we stayed there a little while. Phil Hull came along there looking up and down for me to come and go along with him. When we got out of the Montana Bar I don't remember whether Joe Pablo was still sitting in the car or not. We left him sitting in the

(Testimony of Charles Hunter.)

front seat when we got out. I don't remember whether he was there when we got back, but I think he was and facing forward. We came from the back end [29] of the car. I had whiskey. It was wrapped up in a little bundle—one bundle. I put it in the car. I guess Joe was looking at us. I know he was. He said to speed up, we would have to be going. I don't remember all that he said. Guess Phil Hull got in there when we did. That five dollars was given to me by Schlossberg's. I don't believe we were in the car just then. We were there at the corner—I and Lawrence Pritchett, Charley Stevens, Phil Hull and Joe Pablo. The whole party was there in front of Schlossberg's, and that is where he gave me the five dollars. I don't remember what time of the day that was. The car was right in front there. It was there right by the sidewalk, I don't remember just how it was now. I didn't ask Joe for this money. I don't remember of anybody asking him for it. Joe said we will have to take some out with us—some whiskey. He said whiskey and gave me this money. I am an Indian and have got land up on the reservation. I got whiskey in the saloons in town. I didn't get it at the Frog Pond. Tony Barnaby got it. I didn't say awhile ago that I went in and got it. I got this other man to go in there and get it for me. At the Montana Bar I said I went in and got it. No questions asked. I was not acquainted with the barkeeper or proprietor of the Montana Bar. I had bought liquor there before. I couldn't say how many times be-

(Testimony of Charles Hunter.)

fore. Not many times, but some time before. I said that on the way out some one picked up a bottle some two or three miles out of town here. [30] Somebody else picked it up. I don't remember who it was. I couldn't say it was Lawrence; but somebody got out and picked it up there. I don't know if I put it there myself or not. I might have, I couldn't say. I didn't tell this somebody else where to pick it up. The car stopped and he went and picked it up. That was a quart bottle of whiskey. It was hid along the fence on the right-of-way of the railroad. It had paper over it, I believe. I don't remember who told us to stop, but I remember the car stopped and somebody, I don't know who it was, went out and got this bottle of whiskey. I don't think Stevens was drunk when we left town. We picked him up right at the corner at Schlossberg's store. I didn't say that Phil Hull, the driver, drank anything on the way. I couldn't say if he drank or not anywhere on the road, but I could say that Joe Pablo drank on the road, along the road from town and down at Johnny Matt's place and all along the road between here and Arlee. They were not drinking all of the time. We stopped at Couture's place. I pulled out the bottle there and gave some to Mr. Couture. I did say that from four or five miles from Missoula I put all the bottles in the seat. That was when somebody got out to get the other bottle. I was sitting in the back seat and put the bottles in under the cushion and some in my pocket. I don't remember how much I had two pints

(Testimony of Charles Hunter.)

in my pocket. I couldn't say if anyone else had any in their pockets. They were in my pants' pocket. The rest of them were in [31] the machine. They were not wrapped up in my pocket. I put them under the seat. I put them under the seat. At Joe's place I took out those bottles and put them in the front seat. I had them right behind me, this way, I didn't take them and put them under the seat. They were not wrapped up when in the machine at this place. There was three or four quarts. They wasn't standing, they was laying down, four quarts laying down in the machine on the side where I was sitting and right behind me. I was not sitting on the bottles, they were around me. All of them were full. I *didn't Gilbeau* at that time. I didn't know who it was who stepped out there and started to shoot or said something; I didn't know it was Gilbeau. He said stop, I guess, I couldn't hear what he was saying. He threw up one hand and he didn't have a gun right away, he pulled out his gun afterwards. I couldn't say how many shots were fired. I broke the bottles, those four quarts. They were not from my pocket. There was one bottle from my pocket, a pint. I broke that also. I just took them and hit with my hands; took two at a time and hit them against each other.

Redirect Examination by Mr. MURPHY.

I don't know the man at the Montana bar that sold me the whiskey. I couldn't say now how he looked. He was the bartender, because he was behind the bar. We went a little [32] past the

(Testimony of Charles Hunter.)

Montana Bar when we stopped that morning—some forty or fifty feet.

Recross-examination by Mr. BESANCON.

Q. You have been convicted of introducing liquor on to the reservation?

By Mr. MURPHY.—I object to that as not proper recross-examination, and incompetent, and irrelevant and immaterial.

By the COURT.—Yes, it is, but I really think it ought to be allowed to be answered. Of course, this question with reference to whether a man has been convicted of a felony, that testimony is permitted in evidence so that the jury may take it into consideration, and weigh the credibility of the witness. My view is that it is better, because if it is a simple offense, why, the jury would take it into consideration in considering its credibility. If it was murder, or rape, it might have a much different effect upon the credibility of the witness. He may answer the question, whether he has been convicted of a felony, or not?

A. Yes, sir.

Redirect Examination by Mr. MURPHY.

Q. Did you plead guilty, or were you tried?

A. I plead guilty.

Witness excused. [33]

Testimony of Charles Stevens, for Plaintiff.

Whereupon CHARLES STEVENS, a witness called and sworn on behalf of the plaintiff, testified as follows:

Direct Examination by Mr. MURPHY.

My name is Charles Stevens. I live at Arlee and have been living there about nine years. I know the defendant Joe Pablo. I am not a member of the Flathead tribe of Indians. I am a citizen of the United States; born in Canada. I was in Missoula in October, 1915, and saw Joe Pablo there. I left town with Joe Pablo, Phil Hull, Charlie Hunter, and the rest of the party. I think it was on the 5th of October the day we so left town. On that day I first saw Joe Pablo on the street, on Higgins Avenue. We were all together then, all those I have mentioned. I don't know the exact spot on Higgins Avenue; it was down on the street somewhere, on some corner. After we met him there we all got in the car and went on down the street, towards the depot, I think we went around there on Railroad street, the street we stopped at in town. I don't know exactly where we stopped; it was down after we passed the depot. I don't know where the Montana Bar is. I couldn't say whether there was a saloon where we stopped or not. When we stopped there Charlie Hunter and Pritchett got out of the car and went in back some place, I don't know, towards the back end of the car. They were not gone very long. When they came back they got in the car again. [34] Charlie Hunter had a parcel with him and took it in the car. Before we

(Testimony of Charles Stevens.)

met Pablo I had not been drinking. I don't drink and had not drank anything up to the time that I got out of the car at Railroad Avenue. When they got back into the car the package I think was put under the seat or in back of the seat in the back of the car. Then the car and we went on out; went out of Missoula. We stopped some place, I don't know; it was about four or five miles out of town. I guess Charlie spoke, I don't know, and the car stopped. I don't think there was anybody said to stop it. Then some of them got out of the car; I don't know who it was. I think it was Pritchett that got out of the car. He went,—I think he went back a ways, or went to one side of the road. The car was stopped when Pritchett got out. I don't know whether it was turned around, or backed up. I think it backed up. The person that got out of the car, I don't know what he did. He went to the side of the car and got something and brought it back with him. I didn't see what it was. I don't remember what it looked like. I don't know whether it was wrapped up I couldn't say that. After we left Missoula and along the road and after we got out from town we took some drinks. I guess it was whiskey. It was in a pint bottle. I don't remember how many drinks we took. I took four or five drinks anyhow, and all the other boys did. When I say all of the other boys, I mean, well, Joe Pablo, I think, and Pritchett and Hunter. I don't think Mr. Hull drank. [35] I don't think he drank any; I didn't see him. All the others that I have mentioned drank at the

(Testimony of Charles Stevens.)

time. I got out of the car at Johnny Matt's place; up on the hill there. As to my condition when I got out of the car at Johnny Matt's place, I was feeling pretty good. I was under the influence of whiskey, We were not all drinking all the way from Missoula to Johnny Matt's place. We were quite a way out of town before we drank. Along the road we had a few drinks. I stayed at Johnny Matt's place. We had four or five drinks I suppose in that time all along the road. I don't know whether there were any drinks taken at Johnny Matt's place; I don't think there was. Then I went up to Johnny Matt's house. I didn't go in there with the automobile. As to the package that was put in the car at that time, I think it was put in the back seat where we were sitting. I don't remember whether it was on top of the seat or under. I think it was under, some place in there.

Cross-examination by Mr. BESANCON.

At the place we stopped beyond the depot I stayed in the car all the time. Joe was sitting in front. I saw him there all the time. I don't remember whether Phil got out or not. I cannot just remember how many drinks we had on the way out. As I said, four or five times, I think. I do know where the bottle came from that was passed around—I think it was from Hunter. I think it was all the time from Hunter. I think he was the one that had it. [36] I could not say that I saw Joe Pablo with the liquor on that trip out. I didn't see him. Hunter took this from his pocket.

(Testimony of Charles Stevens.)

Redirect Examination by Mr. Murphy.

I saw Joe Pablo taking drinks out of the bottle—the same bottle that I drank out of. I don't know whether there were any drinks taken between Evaro and Johnny Matt's place. I don't know, that isn't very far from where I got out, about five miles, I think.

Witness excused.

Testimony of Lawrence Pritchett, for Plaintiff.

Whereupon LAWRENCE PRITCHETT, called and sworn as a witness on behalf of the Government, testified as follows:

Direct Examination by Mr. MURPHY.

My name is Lawrence Pritchett. I live at Arlee and know the defendant Joe Pablo. Have known him about three years. The first part of September, 1915, I was here in Missoula. Saw Joe Pablo here at that time. Left town on the 4th or 6th, I think—of October, I think. I left town with Joe Pablo, Charlie Hunter, Charles Stevens and Phil Hull. I first saw Joe Pablo that day walking around the streets. Phil Hull was with him and Charlie Hunter. I didn't talk with Joe Pablo just then. I met him several times on the street and we just talked. I saw Pablo give Charlie Hunter some money that day. I saw him give him [37] five dollars down here on the street. It was in front of the Montana saloon, I think. Pablo told Hunter to go buy whiskey with it. After that we walked in the saloon there and got the whiskey. I and Charlie went in the saloon and Charlie bought the whiskey there. He bought three quarts, and two

(Testimony of Lawrence Pritchett.)

pints, I think. I saw the whiskey after that. I saw it all the way until we got to Arlee. We left town about eleven o'clock. Charlie Hunter, Charles Stevens, Joe Pablo and Phil Hull were in the car at that time. After we left Missoula, I remember the car stopped about three miles the other side of Missoula. I don't know who ordered the car to stop. When the car stopped someone, I don't know who it was, got off. I did not get off. Whoever got off went to the fence, the corner, and got it and it was put in the car, there in the back seat. When Hunter got the whiskey at the Montana saloon he wrapped it up. It was put in the back end, at the back end of the back seat. It was laying right in the bottom, in the back. When we picked up the quart bottle along the road it had a paper around it and we took the paper off and put it under the back seat. Joe Pablo was sitting in the car, I think, when that was done. There were some drinks taken in that car as we went along the road. It was whiskey, and I drank some. They was all drinking. By that I mean Charles Stevens, Charlie Hunter, Philip Hull, and Joe Pablo. I don't know just which one passed the bottle. It [38] was a pint bottle. At different places along the road we took drinks. We took drinks after we passed Evaro. The first stop after passing Evaro was about six miles the other side of Evaro, at Johnny Matt's place. Charles Stevens then got out. He was feeling pretty good. The others in the car were feeling about the same. We had some drinks at that place, the bunch of them that was in the car. From there

(Testimony of Lawrence Pritchett.)

the car went to Octave Couture's place. We had another drink there. Couture's place is about a mile from Arlee, on this side of Arlee. We all took drinks there. We stayed there about twenty minutes, I guess. Couture's place is back from the road. From there the car came back to my father's place. This is about six miles this way from Mr. Couture's place. Not between Arlee and Couture's place, but this side of Arlee. I got out of the car then. I was not with the party again that day, or the next day. I was at Arlee during the month of September. I don't think I was away from Arlee around the first part of September. I saw Joe Pablo at Arlee around the 5th or 6th of September. This was in the year 1915, and all the transactions that I spoke about were in 1915. Arlee, Montana, is on the Flathead Indian Reservation. On September 5th and 6th I was down at Arlee. At that time they had a hand game down on the river, about a mile from the town of Arlee. There were about a hundred persons present, white people and Indians. I was there and went down there with Joe [39] Pablo. I just went down once I think—twice. He told me to get in the car and we would go to the hand game, and we did. This was on the 5th of February, I think,—the 5th of September or October, it was. I met him at the Chinese restaurant. Pablo told me he would take me to the hand game and we went. When we got down there we had drinks there. There were several, Henry Matt and myself. We got the drinks from Joe and drank them down there at the hand game. After-

(Testimony of Lawrence Pritchett.)

wards we came back to the Chinese restaurant; that is, myself, Henry Matt, Joe Pablo, and the Chinaman. We were traveling in Joe Pablo's automobile. When we went to the Chinaman Joe told him to give him a bottle of whiskey. I don't know if we had any more whiskey there then. The Chinaman got a quart bottle and gave it to him. I saw Joe Pablo the next day and was around with him. There was some drinking the next day around Arlee. I was with Henry Matt, Joe Pablo and Frank Kirkpatrick. We were drinking over at Blue-eyed Mary's. Her place is across the creek from Arlee, about a quarter of a mile, I guess. I don't know who had the liquor there. We were in the car when we left Arlee to go over there. In the car were Frank Kirkpatrick, Henry Matt, myself, and Joe Pablo. There was a quart bottle in the back seat of the car, I think. Joe was running the car. I didn't see anybody put the liquor in the car. There were no drinks taken along the road.

Cross-examination by Mr. BESANCON. [40]

The day we left Missoula Joe gave Hunter five dollars. He was in front of the Montana saloon, if I remember right. I think it was down west from the Northern Pacific depot. It was a five-dollar bill. As to whether Joe gave Hunter a five-dollar bill in front of Schlossberg's store when I and the rest of them were present, I don't know just what it was. I remember he gave him money. I don't remember just exactly where it was. It was on the street there somewhere. I think it was just before Hunter and I

(Testimony of Lawrence Pritchett.)

went back toward the Montana Bar. That is my recollection of it. That is all that was bought at the Montana Bar as I remember it,—three quarts and two pints. I think it was at the time that somebody went to the corner of the fence or the railroad there to get something, that the bottles were put in the machine in the back seat. I think Charlie Hunter did that. I was sitting there with him at the time. I had to get out of the machine and so did Stevens I don't know who brought the other quart and put it in the same place. I don't know just who got out of the car and went and got it; I don't remember. There was just one went and it was not me. On the way out Joe passed one bottle around and Charlie passed one around. Joe passed a pint bottle. He took it out of his pocket. We went to Couture's to look for Louis Pablo, I think.

Witness excused. [41]

Testimony of Henry Matt, for Plaintiff.

Whereupon HENRY MATT, called and sworn as a witness on behalf of the plaintiff, testified as follows:

Direct Examination by Mr. MURPHY.

My name is Henry Matt. I live at Arlee, about a mile and three-quarters east from Arlee. I know Joe Pablo and have known him since he was a little boy. He is a brother-in-law of mine. Think I remember seeing Joe Pablo in Arlee last September; it was in the neighborhood of the 5th, the 5th or 6th of September, 1915. At that time I was down to the ground there, where they were playing hand game .

(Testimony of Henry Matt.)

that evening, and Sunday on the 5th. Joe Pablo and Pritchett were there, and I saw Joe going around there playing with those fellows. They were playing hard and Mr. Pritchett made the statement to me. Joe was not there. Lawrence Pritchett told me something, and from there we started over to the Chink's. The Chink's place, that is the restaurant at Arlee. We started in an automobile, four of us,—Lawrence Pritchett, Ole Dennon, Joe Pablo,—there was five of us. Mong is the Chinaman. We went up to the Chinese restaurant. We went there, because it seems that they had,—that Joe Pablo asked the Chinaman if he had a quart. The Chinaman and Joe went out and came back with a quart of whiskey, I think. This we drank outside of the automobile, outside of the car, close to the automobile. I drank some of it with the others. We drank it all there. I guess I was around [42] with Joe the night after that; I went to sleep in the car and was unconscious and didn't know any more. I know where Blue-eyed Mary's place is. I think I went over there with Lawrence Pritchett and I think, Frank Kirkpatrick and Joe. I didn't see any liquor in the car at that time, because I was out of my memory. We all had a drink of whiskey at Blue-eyed Mary's, somewhere up around the stacks. I cannot recall who had the whiskey around the stacks, we was all drinking. I was pretty full, and I was out of my memory, and it was passed around among all of use there. Kirkpatrick, myself, Joe, and Lawrence Pritchett were there.

(Testimony of Henry Matt.)

Cross-examination by Mr. BESANCON.

I think I went over to Sanders with them that day. I went to sleep in the car, I think, when we went over there. I couldn't remember much about it. I was not in a condition to remember very well. When I woke up I went over to Arlee, Montana, and that is all I know and all I can state definitely.

Witness excused.

Testimony of R. J. Holland, for Plaintiff.

Whereupon R. J. Holland, called and sworn as a witness on behalf of the plaintiff, testified as follows:

Direct Examination by Mr. WHEELER.

My name is R. J. Holland. I am acquainted with Joe Pablo, and have known him ten or twelve years. I remember when the hand [43] game was going on at Arlee, and saw Joe Pablo about that time. This was in front of the Haynes store. That day I went out with Pablo to the ranch of Charley Sanders. Mr. Haynes, Lawrence Pritchett, Henry Matt and Frank Kirkpatrick went out in the car at that time. After we started I saw a bottle of whiskey. Joe was driving the car, and some whiskey was drank in the car. I cannot say just who drank it. I don't remember whether Joe drank or not. I don't remember the exact date, but would imagine that it was some time in September, during the time that the hand game was going on there. I couldn't state the exact date. Joe was driving the car that day, and I would say that he had been drinking. The first time I saw the bottle it was passed from

(Testimony of R. J. Holland.)

the back seat to the front seat. I was sitting on a small seat in the back of the car. It was a quart bottle. I didn't notice the brand.

Cross-examination by Mr. BESANCON.

I think Haynes was sitting with Joe in the front seat, and I sat in a little small seat, with my arms resting on the front seat. In the big seat behind were Henry Matt, Frank Kirkpatrick, and Lawrence Pritchett. The bottle was passed from behind. I only saw it passed once.

Witness excused.

Testimony of Frank Kirkpatrick, for Plaintiff.

Whereupon FRANK KIRKPATRICK was called and sworn as a witness on behalf of the plaintiff, and testified as follows: [44]

Direct Examination by Mr. WHEELER.

My name is Frank Kirkpatrick. I live at Arlee, and have known the defendant three or four years. I remember when the hand game was going on in Arlee. I saw Joe then. Took a ride with him over to Sanders' place. Joe drove the car. Just before we went over there we had come over from the Chinaman's restaurant. We had our breakfast at the Chinaman's, Henry Matt, Lawrence Pritchett, Joe Pablo and I. When we came back there was a quart bottle of whiskey in the car. I didn't see who put it in there. On the way out I drank some of it. I don't know whether Joe took a drink or not, I don't remember. I don't remember the brand of whiskey.

(Testimony of Frank Kirkpatrick.)

Cross-examination by Mr. BESANCON.

I was sitting in the back seat of the car with Lawrence Pritchett and Henry Matt. I don't know who started to pass the bottle, I couldn't say. It started from the back seat. That is my recollection of it.

Witness excused.

Testimony of Lucy Kirkpatrick, for Plaintiff.

Whereupon LUCY KIRKPATRICK, called and sworn as a witness on behalf of the plaintiff, testified as follows:

Direct Examination by Mr. WHEELER. [45]

My name is Lucy Kirkpatrick, wife of Frank Kirkpatrick. I am acquainted with Joe Pablo and know where Blue-eyed Mary lives. She lives across the creek from Arlee. I was at Blue-eyed Mary's place some time last September, talking with her. We moved there about the last of August. My husband stayed there too. I remember the time my husband came into Missoula. He came in with Joe Pablo, his wife, and I, the four of us. I don't remember what day of the week it was. When we got back from Missoula the next day I was at Blue-eyed Mary's and I saw Mrs. Joe Pablo there, she came there with me, and then there was my husband. He came back about 12 o'clock that night. The next day I saw Frank at the haystack, and there was three parties there with my husband. I saw them all around there at the haystacks, saw them drinking. I went around the stack afterwards, as soon as they went away, and picked up a pint bottle that was laying there. That was the day after we came back from

(Testimony of Lucy Kirkpatrick.)

Missoula with Joe and Mrs. Pablo. My husband didn't come back with us that day.

Cross-examination by Mr. BESANCON.

At Blue-eyed Mary's they were all around the haystack. That is not far from Arlee,—right across the creek, very close to the road and to the Sanders' house. I stood in the window and looked out. I was too far away and couldn't see the parties very well, but Lawrence Pritchett was close to where I [46] could see him. He took a bottle and passed it around. I didn't see where he got the bottle. I found the empty bottle there after the parties left.

Witness excused.

Testimony of Andrew Gilbeau, for Plaintiff.

Whereupon ANDREW GILBEAU, called and sworn as a witness on behalf of the plaintiff, testified as follows:

Direct Examination by Mr. WHEELER.

My name is Andrew Gilbeau and am a member of the Indian police of the Indian Flathead Reservation. I have known Joe four or five years, something like that. I live at St. Ignatius. Joe Pablo lives at Ronan, lives some two or three miles from Ronan, northeast from there. I saw Joe about the 5th of October. Saw him at the Mission, as he went through in an automobile which Phil Hull was driving, and in which were Joe and Louis Pablo, Phil Hull and Charlie Hunter as far as I know. There were some women in there, but I didn't know who they were at that time. After I saw them go through

(Testimony of Andrew Gilbeau.)

the Mission I got in the machine and went after them. I had received orders to stop the car, and I followed it on toward Ronan. I caught up with them somewhere this side of Ronan, not far from Ronan, this side, and I passed them, and as I passed them I tried to stop their car, that is, I started to get off of the machine, I stood on the side and looked at them, and hollered at them to stop, and I jumped off [47] and tried to block them, and they kept on going, and Hull went over the other way and took the way off of the road, and they went around there, toward the timber, and when they got up there above always they came back down to the main road again. I fired three shots there. Before I fired the shots I flashed by badge and tried to stop them, and I hollered to stop three or four times. They just wheeled around and started right off away from me. They went off on another road. There is a wood road there, and I—it is an old road, and I don't know what they call it. Just where they turned off there was no road. After they left this road they went into another road, and after that from the main road, up toward Ronan. Then they came back into the main road. I went after them, up towards Ronan. I came back with Mr. Ramsey. When I was going that road I saw them drinking out of bottles. When we came back we got a number of bottles there. This was after we came back. Liquor, that is, whiskey, had been in the bottles. I could tell by smelling of the bottles. These we picked up right alongside of the track, right where I seen that

(Testimony of Andrew Gilbeau.)

they were breaking the bottles. It was a pint bottle and a big bottle. I picked up parts of them and could tell there was labels on them. I picked up one bottle.

By Mr. BESANCON.—We object to the witness testifying to the labels on the bottle. I think the witness said that it looked like these pieces. The witness is not able to identify the bottle that he [48] said he picked up.

By the COURT.—He can testify with reference to them, and you can cross-examine with reference to it. They are not bound to produce them. The objection is overruled.

(Exception noted by the defendant.)

As to the kind of bottle, it was one of those pint bottles; it was a big bottle, a flask, and it had a label on. The label had never been broken off the bottle. I didn't notice what make it was. I know it was a whiskey bottle and that whiskey was written on the label.

Cross-examination by Mr. BESANCON.

I lived at St. Ignatius. I didn't speak to anyone in the party when they went by. I didn't have any chance to as they went right on by. At that time I was standing off the porch at Beckwith's store, and I didn't notice them until they past by. They spurted past and I couldn't stop them then, they were gone too far by. The side curtains were up. It was raining. I am sure I know who was in the car. I didn't know all of them that was in the car, but I knew it was Pablo's car. I could tell that they was

(Testimony of Andrew Gilbeau.)

coming out. I had a telephone that they were coming out. Mr. Yaeck, or whatever his name is, and P. G. Carlson went out with me. I am not sure if I could have caught them if they had not slowed up for some purpose. They slowed up behind a wagon and then I [49] passed them. I was then riding in the back seat. I just opened the door as they went past, stepped on the running-board, and just as I went by them I got up and stepped out and held up my hand and showed my badge, held up my hand to stop, and just as I stopped, they went over the bank. I said we went over the bank, but there is a bank each side of the road. I then shot at the car, after they went by. I tried to stop them and I fired by them at the hind wheels. I have been in the Indian service about five years, most of the time. I lay off a month or so at a time. I have not laid off very much of that time, not over two months at a time, or two or three months. After the car turned away at the place where I did the shooting I didn't follow them right then. They went on the road toward Ronan and then came back to the road, and we followed them up. I saw the Pablos throw something out of the car. I seen them when they were reaching out breaking the bottles. When we came up I stopped and picked up the pieces. We came back three or four days after, something like that, and picked up the pieces out of the bottles.

Witness excused.

Testimony of R. E. Haynes, for Plaintiff.

Whereupon R. E. HAYNES, called and sworn as a witness on behalf of the plaintiff, testified as follows:

Direct Examination by Mr. WHEELER.

My name is R. E. Haynes and I am a merchant at Arlee. [50] I am acquainted with Joe Pablo. I have a ranch some place there. I remember going over to this ranch, the Charley Sanders' ranch. This was some time last September. In the car were Mr. Holland, Frank Kirkpatrick, Henry Matt, Joe Pablo, and Lawrence Pritchett. Before we got to Sanders', I don't remember just where it was, I saw some whiskey in the car. I don't remember whether it was a quart, or a pint bottle. The bottle was passed around, I couldn't testify whether anybody drank or not.

Cross-examination by Mr. BESANCON.

I was going out on a business trip with Joe Pablo and sat in the front seat with him. We were going to look at some hay that I had. A bottle was passed to me from the rear. It must have been passed from the rear. I took the bottle and nobody wanted a drink, so I handed it back over my shoulder this way.

Witness excused.

Testimony of J. W. Ramsey, for Plaintiff.

Whereupon J. W. RAMSEY, called and sworn as a witness on behalf of the plaintiff, testified as follows:

Direct Examination by Mr. WHEELER.

My name is J. W. Ramsey. I am a special officer

(Testimony of J. W. Ramsey.)

for the suppression of the liquor traffic among the Indians. I know where Charley and Octave Couture live, also where Johnny Matt lives, and [51] know where the Johnny Matt lane is. I am familiar with the interior boundaries of the Flathead Reservation on all of the roads. Johnny Matt's place, the Johnny Matt lane, Octave Couture's place, the place where the hand game was played last September, the home of Lawrence Pritchett's father, the Chinese restaurant, known as the Mong's place at Arlee, and which is the only Chinese restaurant there, are all within the exterior boundaries of the Flathead Indian Reservation.

I was at Ronan the 6th of last October, when Gilbeau came there, and I went back with him. I am familiar with the road between St. Ignatius Mission and Ronan. The entire distance of this road between those two places, also the town of Ronan, are within the exterior boundaries of the Flathead Indian Reservation. I don't know an Indian woman named Blue-eyed Mary. When I saw Gilbeau in Ronan on the 6th of October I got into an automobile with him and went south from Ronan. We went to the head of what is called the Nine Pipe Reservoir. From there we took up the road that runs east into the timber, sort of north and east, to the track of an automobile, and went around that road. I looked for some bottles, some broken bottles, and I picked up some bottles there at that time. I couldn't tell what had been in the bottles except from the paper and the labels. I know the labels that were on the

(Testimony of J. W. Ramsey.)

bottles. The main paper label was Joel B. Fraser Whiskey, and over the stop, the pieces that I had that went over the [52] stopper that had been in the bottle was a Government stamp on it, which said a hundred proof, one-fifth gallon.

Cross-examination by Mr. BESANCON.

It stated one hundred proof, one-fifth gallon. Had a couple of stamps on, and marked Joel B. Fraser. Witness excused.

**Testimony of Lawrence Pritchett, for Plaintiff
(Recalled).**

Whereupon LAWRENCE PRITCHETT was recalled as a witness on behalf of the plaintiff, and testified as follows:

Direct Examination by Mr. WHEELER.

I testified here a moment ago. I remember going over to the Sanders' ranch, and on the way over there was some whiskey drank. I don't know where it came from. It was in the car there at the Chinaman's when we got in. It was a quart bottle and was lying in the back end, in the back seat.

Witness excused.

Government rests.

DEFENDANT'S CASE.

Testimony of Joe Pablo, on His Own Behalf.

Whereupon JOE PABLO, called and sworn on his own behalf, testified as follows:

Direct Examination by Mr. BESANCON. [53]

I am the defendant and my name is Joseph Pablo. I am an Indian and live at Arlee. I have lived there

(Testimony of Joe Pablo.)

about a year, on some land that I bought. I have some allotted land on the Reservation near Ronan. I am married and have four very young children.

I was in Arlee about the 5th of September, I believe the 5th was Sunday, and I was there on that day. My wife was with me in the machine. We went to Blue-eyed Mary's place together. The way I happened to go there, I met Lawrence Pritchett and he asked me if I wanted a drink, and I said, "If you have any I will take a drink. He then said to come over, that he had a cache over there at the creek. Then Henry Madden, Lawrence Pritchett, my wife and I drove over there. We couldn't cross the creek with the machine and we got off and crossed the foot bridge. From there we went over to the stack. Then Lawrence Pritchett went down in the brush and got a bottle. He didn't go very far, just a little ways, and brought back the bottle. Lawrence passed it to me and I took a drink and the rest all drank. Lawrence put the bottle back in his pocket, and we got around there until we emptied the bottle. Then we talked for awhile and then we got another bottle. That was a pint bottle and we emptied it and threw it away. Then, after that, we opened it and drank it, I don't know what he did with it. He produced three bottles in all. From there we went up to the hand game. From Kirkpatrick's we went back across the creek and got in the car and drove back to the river. Then we went and looked at [54] the hand game. I was not in the car while we were at the hand game, and I didn't see any

(Testimony of Joe Pablo.)

liquor there, but that day I did see some and this was after we got to the hand game. Lawrence Pritchett brought some over. He called us away down in the brush and went a little ways and got a bottle. This was a short distance away from the hand game. He passed some to me and to the others. When this was all gone I left, and went back to Arlee and came down with my wife and we came to Missoula that night and we went back again that same night. On the next day, the 6th, I was in Arlee, and went out and bought some hay that day. On the trip there was with me Henry Matt, Frank Kirkpatrick, Lawrence Pritchett, Mr. Holland, and Mr. Haynes. I wanted Holland to kind of help me out in regard to the hay and he went out to do this and for the ride. I was buying the hay from Mr. Haynes. The other three just went along for the ride. We started from the front of Mr. Haynes' store. I was sitting in the front seat with Mr. Haynes. I believe I saw some liquor or bottles on the trip. The bottle was passed and I refused it. I didn't take any. Mr. Haynes passed the bottle back to the back seat. I didn't drink at all. On that same day I came from my place to Arlee in the morning, I guess about noon, and Lawrence Pritchett asked me if I wanted a drink and I told him I would take a drink if he had it. He said he had a cache and he went to the stack and got a bottle there. On that day Henry Madden, Lawrence Pritchett and I left to go to Kirkpatrick's. [55] This was Blue-eyed Mary's place. Kirkpatrick was there. We then drank a pint. I don't

(Testimony of Joe Pablo.)

know what was done with the bottles. I never put that liquor down in the brush there. I never told anybody to put it there. I had not given anybody any money to buy liquor or put it there. I guess it was there before; I don't know anything about it. I know the Chinese Restaurant at Arlee. I had been there sometimes to get liquor. As to the witness testifying that I went down there and the Chinaman brought out a bottle, I don't remember anything at all about it.

Q. Well, now, if I had this right, the witness that mentioned it, said that he thought that that was the time, just before you went to the hand game; isn't that it? Before, if I got it right. Did you, before going to the hand game, go down to the Chinaman and get a bottle? A. I believe I did, yes.

Q. Well, just tell us about that?

A. Well, I didn't see any whiskey there.

Q. What is that?

A. I didn't see anything there at all.

Q. You didn't see anything? A. No, sir.

Q. You didn't get any? A. No, sir.

Q. Well, did you see anybody get any at that time?
[56]

By the COURT.—Did he answer you that he got a bottle of the Chinaman? Read the question to the witness.

Q. Did you, before going to the hand game, go down to the Chinaman and get a bottle before going to the hand game, did you see anybody get any whiskey at the Chinaman's?

(Testimony of Joe Pablo.)

A. No, sir. I was in Missoula on the 5th of October. The night before I kept my car at a place located next to Schlossberg's at the corner, Shoemaker's place. On that day I got out of town about 10 or 11 o'clock, I think it was.

At this point a recess was taken until 1:30 o'clock of the same day.

1:30 P. M., same day, trial resumed.

On the 5th day of October, on leaving Missoula, I got into the car in front of the Schlossberg's store. I didn't give Charlie Hunter any money to buy booze. We all got in at that point. Charlie Hunter asked me if I would give him a ride as far as Ronan. I told him I would and they all asked me to take them right out to Ronan. Charlie Hunter had not been working for me at all and was not going to work for me that I remember of. From Schlossberg's store we went to the depot, that street going down to the depot. Lawrence Pritchett asked us to stop there and we stopped. I didn't get out of the car at all. Charlie Hunter got out. I didn't know where those two men were. We stayed there [57] quite a while, then they came out. Three of them came back. Nobody said anything about starting out again, we all got in and started. I didn't see them putting anything into the car nor hear them say anything about putting anything into the car. Nothing was said about liquor or whiskey at all. I never said anything and didn't hear them say anything on way going out. We stopped about four or five miles out of town. Lawrence Pritchett asked

(Testimony of Joe Pablo.)

us to stop. He got off. I didn't notice which way he was going, nor what he was going to do. I thought he was going to do something, but I didn't watch him. He went out to the fence and I didn't see him bring anything back. We all got in again. I didn't see anything going on in the back seat. I didn't see them taking out anything from the front of the seat and putting it in the machine. We drank something on the way out, before we stopped. Lawrence Pritchett pulled out a bottle and passed it around. When the second pint was brought out we were quite a distance out, we were about a half mile passed DesMet. Nothing was passed after that. I didn't see any liquor in the car after that and didn't know there was any liquor in the car. We went right on, on the main road, until we stopped at the Matt lane. The Matt lane is about nine or ten miles from where we would have crossed the Reservation line, maybe more, I couldn't tell exactly. The Matt lane is about four miles from Arlee. The Reservation line is right near Evaro. From the Matt lane we went [58] to Couture's place. Nothing happened at the Matt lane except that we stopped there and Charley Stevens got out. No liquor was passed around. We went over to Couture's place to see if Louis was there, and they said he was gone; so we turned around and came back again. We saw Couture and his wife. I didn't see any liquor there. From there we went down to my place. We made one stop, at Mr. Pritchett's place, where Lawrence got out. I didn't see any liquor passed around there. Then we

(Testimony of Joe Pablo.)

went on to my place. Pritchett's place is about four miles from my place. At my place we had dinner, and then started again. When we left my place my wife and the three children were with me, and Charlie Hunter and Phil Hull. I was riding in the hind seat with my wife and the children. Hunter was riding in the front seat with Phil Hull. I didn't see any liquor in the car at my place. Didn't see any bottles in the front seat. From there we went to Ronan. We caught up with my brother Louis at Ravalli. He got into the car. We had the curtain down and it was raining that day when we left my place; that is, the side curtains were on and the curtain on the back also. We didn't stop at St. Ignatius. We went right on through there. After passing St. Ignatius a car passed us, but I never noticed it. I didn't know anybody was in the car until there was some shooting. I didn't tell anybody to run away from them. I didn't say anything to the driver; didn't say a word. I heard four or five shots. In the car my wife was consoling the [59] kids, they were crying and I was helping her with the kids and I didn't notice anything. I didn't see a rig ahead of us, because there was two fellows ahead of me and I couldn't see. These men obstructed the view in the front, and there was a wind shield in front and it was dirty and I couldn't see through it very well.

The wind shield was up and the curtains were down on the car. It was raining, and it was pretty muddy. I didn't hear anybody yell and say to stop. The car then went west and went to Ronan, and then

(Testimony of Joe Pablo.)

went back to—We just took the road. Then we went to my brother Louis' place and stopped there over night. The next morning I went to my mother's place. From there—they were getting ready to thresh—and I had more business in Ronan and went there, and was arrested there, right in front of the State Bank, and brought into Missoula. On that trip from my place at Arlee, right on up to my place at Ronan and my brother's place, I didn't see any liquor in that car on that trip. None whatever; no bottles of any kind. Didn't see anybody breaking any bottles and throwing them out.

Cross-examination by Mr. WHEELER.

As to the charge against me on September 5th and 6th, I was at Kirkpatrick's and Mrs. Kirkpatrick and my wife came into Missoula with me on Sunday, the 5th. It was in the afternoon, towards evening. Kirkpatrick was not with me that day in Missoula, [60] and we were not drinking in Missoula together. He did not come in with me. Mrs. Kirkpatrick and my wife were here, but he was not with me. I didn't see him at all that day. I was not down here in the garage with Kirkpatrick and I didn't see him at all that day. We went back in the evening to Arlee, and I took the women folks over to Blue-eyed Mary's and left theme there and went to the hand game and then came back and went home. Was at the hand game an hour, I guess. I didn't see Harry Pritchett down there. I was not there on the night of the 6th and didn't see Harry Pritchett down there on that night. It is not a fact that Harry Pritchett

(Testimony of Joe Pablo.)

and I took part in the hand game there the 5th or 6th. I didn't call him to one side and give him a drink of whiskey out of a pint bottle, and I didn't give him a drink out of a quart bottle. I was down at the hand game on the 5th, and stayed there about an hour, or half an hour, I guess. I was with Henry Madden and Lawrence Pritchett, and we had something to drink that night, out of a pint. I didn't see any quart bottle. I didn't have any dinner at the Chinaman's place with Henry Matt and Lawrence Pritchett. I didn't eat there at all along about that time. I just went in there and stopped there a while and went on. I didn't get a bottle of whiskey at the Chinaman's. I had not obtained whiskey there before. I didn't say this morning that I got whiskey there at the other Chinaman's.

Q. Didn't Mr. Besancon ask you this morning if you had gotten liquor there at different times? [61]

By the COURT.—Well, he did put sort of a double question to the witness, and asked him if he was not at the Chinaman's and got booze, and answered, I believe I was, I believe I did. Now, whether he was answering the first part of the question and told him he got the booze, or whether he was at the Chinaman's would be for the jury.

I didn't get any whiskey at the Chinaman's at all. I saw no whiskey there and didn't have any drink at that place. On going over to the Sanders' place there was a bottle passed from behind, but I didn't see where they got it from and didn't know it was in my car.

(Testimony of Joe Pablo.)

I went over to Blue-eyed Mary's place. Lawrence Pritchett invited us over there. I didn't ask for Frank Kirkpatrick. I knew he was there. I went out by the haystack with Kirkpatrick and Matt and Lawrence Pritchett. I don't think Henry Matt was drunk at that time. It is true that there was a quart, and also a pint, bottle of whiskey there. Lawrence Pritchett had it.

I was convicted of introducing whiskey into the Reservation before. I was sentenced, but it wasn't my whiskey at all. I pleaded guilty to it here in this court, because it was a friend of mine, and I took the punishment for it. I came in here on October 5th and was brought in by Glenn and Gilbeau, brought into this court at that time.

I didn't engage Hunter to work for me and he didn't work [62] for me after that, and never worked for me at all. Just before he came into town he didn't work for me, he worked for my sister. My sister lives about half a mile this side of Mud Creek, about a half a mile away from me. I first saw the boys, Pritchett and Hunter in front of Schlossberg's. I didn't talk to them on the corner of the street, didn't talk with them at all. When I first saw them they was asking me if I wouldn't give them a ride, and I told them to get in the car. I had not seen them on the street prior to that time. If I did see them I don't remember it. They got into the car, and that was the time we were going home, and drove down in front of the Montana Bar. I didn't notice the bar, but drove down that way

(Testimony of Joe Pablo.)

and Lawrence Pritchett stopped us. I didn't see any saloon there and don't know where the Montana Bar is. There may be some saloons in town that I know, but I don't pay any attention to them. When we stopped Lawrence Pritchett and Hunter got out of the car. They were gone quite a while and then Hull went to see what they were doing. I didn't send Hull after them. I was anxious to get home to go to work. I don't know where Hull went I didn't pay any attention to him, didn't watch him. I saw them get into the car, but I didn't look at them. Didn't see them come out of the saloon, nor did I see them when they came up the street. I heard them get into the car, but I didn't look at them. I was looking ahead, and didn't do this because I thought they had whiskey. After we got out of town Lawrence [63] Pritchett passed a bottle around. When we got down a little farther they asked me to stop. I was still in the front seat, and I didn't look around to see where they went to. Lawrence Pritchett asked to stop. I didn't see him come back from the place and don't know where he went to; I was not watching him. I didn't see him have a bottle of whiskey in his hand.

I didn't see anyone have a drink at Octave Couture's place. We didn't have a drink at the Matt lane, nor at Pritchett's. We didn't have any drink at all, nor did I see anything on the reservation. I didn't see Joe Hunter break bottles and throw them out of the car at the time Gilbeau stopped us. I didn't see any bottles, nor did I see anybody throw

(Testimony of Joe Pablo.)

anything out. I know Harry Pritchett, Lawrence's brother; have seen him a few times. I don't know where they turned off the main road going to Ronan. There was some shooting and I didn't pay any attention to what was going on. The car might have stopped when they were shooting, I couldn't say. The children were screaming when the shooting took place. There were four or five shots. I didn't hear Gilbeau say stop. I know Andrew Gilbeau, but I never talked to him very much. Never was over at his place at the Mission. I have known him, but never talked to him. He might be married to some of my relatives, but I am not sure whether he is or not.

I stated that we had some bottles of whiskey at the hand game, but not after we left the hand game. The next day we did. [64] That was the next day over at Blue-eyed Mary's place. I don't know where this whiskey came from. Lawrence Pritchett said he had a cache and went and took it out himself and passed the bottle around. Blue-eyed Mary's place is about a half mile, I guess, maybe not quite, maybe a quarter, from Arlee, and about a mile and a half from where the hand game was going on and about a mile from where Lawrence Pritchett lives. It is not a fact that the whiskey that was drunk at Blue-eyed Mary's place came out of my car. I didn't drink at the Chinaman's place out of a quart bottle of whiskey that we got from the Chinaman. That night I left my wife and children at Blue-eyed Mary's place. They stayed there and I went to

(Testimony of Joe Pablo.)

the hand game a while, and then came back up there and went back home. I didn't leave my people at Blue-eyed Mary's place, but took them along. The first time I was at Blue-eyed Mary's place Lawrence Pritchett was there, the first time I took my wife and family there. He got in in front of Haynes' store and rode over with us. At the time I came to Missoula with Mrs. Kirkpatrick and my wife I went over to Blue-eyed Mary's place. Lawrence went over with us on the 5th, that afternoon, and in the evening I came to town. Lawrence Pritchett was over at Blue-eyed Mary's place; it was eleven or twelve o'clock. We didn't go over to the hand game at night; we went over in daytime. Lawrence was at Blue-eyed Mary's place in the daytime. It was before we came to Missoula and then he had some whiskey there and we had some [65] drinks. He was with us there, there were four of us. He was in front of Haynes' store and he walked,—and he asked us whether we wanted a drink. I told him, if you got a drink I will go over across the creek and get a drink. That was about eleven or twelve o'clock and before we came to Missoula. In the party were Henry Matt, Lawrence Pritchett, Frank Kirkpatrick and myself. When we got back from Missoula Lawrence Pritchett was not over there. The only time that Lawrence was over there was before we came to Missoula and before we went down to the hand game. It was on Sunday.

Redirect Examination by Mr. BESANCON.

I was at Blue-eyed Mary's place in the daytime.

(Testimony of Joe Pablo.)

It was after the hand game that I went there. That same evening I came to Missoula with Mrs. Kirkpatrick and my wife, around about two o'clock, I guess, the same day, and went back that evening. It was on Monday, the next day that I made the trip to the Sanders' place. I was asked a while ago by the district attorney about my sister's place and how close it was to my place, and I stated about half a mile; that is, from my place to Ronan. This place is my allotment near Ronan, and my sister's place is about a half a mile from there. During all the time stated in the counts of the indictment I lived at Arlee, and had been living there about a year. When talking about the place where Lawrence Pritchett lived, [66] I meant his father's place. Lawrence lived with his father at that time and just a little ways from the town of Arlee.

Recross-examination by Mr. WHEELER.

I remember when I was up in the car on the day I was arrested. It was the 6th of September, no, October. I don't remember having a conversation with Mr. Glenn after I went downstairs; I never talked to none of them. I don't remember having made any comment to Mr. Glenn about what the Court had told me. I didn't say that the reason that the Judge had told me what he did was because he knew I was up against it again.

Witness excused.

Testimony of Mong, for Defendant.

Whereupon MONG, called and sworn as a witness on behalf of the defendant, testified as follows:

Direct Examination by Mr. BESANCON.

My name is Mong. I sometime live in Arlee and sometimes at my home in Dixon. Last September or October I lived I think up to Arlee. As to my running a place of business there, I got some, I had some men to put up some buildings. I knew Joe Pablo a few times, but ain't acquainted with him much. I knew him before the time you state. I am not running a restaurant there. I have no restaurant. I just stop there. I have no place there, and no business there. There was another Chinaman in business there. [67] He is John Ling and is not here now. As to seeing Joe Pablo about the 5th of September at Arlee, I couldn't say what day. I don't remember his going out to the Sanders' place, don't know anything his going to the Sanders' place. I remember the hand game and was there. I didn't then give Joe Pablo a bottle of whiskey. I *couldn't whether* he got any whiskey or not. I don't know of his getting any at the place that I mentioned. I didn't see him get any whiskey. I didn't see Joe in town at all, and didn't see him get any whiskey at all. There was no whiskey being sold or given away at this place that I have mentioned at that time; none whatever.

Cross-examination by Mr. WHEELER.

Asked if they had whiskey there at that place, will say that he didn't give me no whiskey and I didn't

(Testimony of Mong.)

give him any whiskey. I didn't see any whiskey there. It was night-time and I couldn't see whether he had any whiskey or not. He didn't tell me he had any whiskey. Joe didn't tell me he had any whiskey; he didn't tell me anything. I didn't see Henry Matt in the night-time. I saw him the next morning. I couldn't say whether he had whiskey or not, that day there. I guess that they ate there. As to whether Joe ate there, I couldn't say. They may have, but I couldn't say. As to Henry Matt eating there, I couldn't say who ate there. I ain't got no business there, just help the Chinaman there. I don't sell liquor there and never have any whiskey. As to saying [68] a little while ago that they ate there, well, it might be somebody else, I couldn't keep track of them. Somebody may have eat there; I couldn't keep track of them. I couldn't say whether Henry Matt was there or not. I might have seen him there, but didn't see him doing anything. As to whether he was sitting down at the table, I couldn't keep track of him. Joe may have had whiskey there and I not know it; I couldn't swear as to that. I don't know whether Henry Matt was drinking or not. At that time I seen him down there, but I don't know whether he was drinking or not. I didn't see him drinking, and he didn't try to throw anything at me.

Witness excused.

Testimony of Philip Hull, for Defendant.

Whereupon PHILIP HULL, called and sworn as a witness on behalf of the defendant, testified as follows:

Direct Examination by Mr. BESANCON.

My name is Philip Hull. I live at Ronan, and have lived there since September and October of last year. I was in Missoula about the 5th of October, last fall, driving an automobile. It was Joe Pablo's machine. I left the machine some place in town, at Shoemaker's garage, and started out from there. It was half-past ten or eleven in the morning. From there I went to in front of Schlossberg's store. Joe was with me when I left Schoemaker's. At Schlossberg's I met Hunter, Pritchett, and Charley Stevens, [69] I believe. This was in front of Schlossberg's store, and they were talking to us while we were there. They got in then. I didn't see Joe Pablo hand any money to anybody. From there we went down on the Railroad Avenue. Some one in the car told me to stop there. I don't know who it was. It was not Joe; somebody in behind. I stopped, and then Lawrence Pritchett and Charley Hunter got out of the car and went up the street. They were gone quite a little while and I went and got them. Found them in the saloon. I don't know the name of it. They were drinking at the bar. I told them to come along, that we had to go on. I walked on back ahead of them to the car. Joe was in the front seat where I had left him when

(Testimony of Philip Hull.)

I came away. The other men got in. I saw them put in a package. They brought a package out from the bar at the saloon. I don't know whether they put it in the car or not; I didn't see them. They got in with it, but I don't know whether they put it in the car. It was wrapped up. We then started out, and stopped out from Missoula about four miles, near the brickyard. Someone suggested to stop. I don't know who it was; I was going along and they wanted me to stop. Lawrence Pritchett jumped out and got a bottle that they had left there the day before. I saw the bottle the day before. I didn't see them take it there this day. I couldn't swear that he was the one that requested me to stop. Somebody in behind wanted me to stop. I didn't see them put anything into the car then. We went on. I couldn't say whether [70] there was any drinking in the car on the way out. I don't know; I wasn't drinking, and I didn't see them. I wouldn't drink myself, and there were no bottles being passed around. We went on to the Johnny Matt place. We didn't exactly stop there, but we slowed up the car, and Charlie Stevens got out. There was no liquor passed around at Matt's place. The next stop was at Couture's place. Mr. Couture was there, I think, and I saw Mrs. Couture about the house. There was some liquor at that place I don't know who had it and I don't know who did take it. Joe didn't take any, and I didn't see him with it. I didn't see any of them drink any of it. I was talking to Octave Couture. From there we went to

(Testimony of Philip Hull.)

Joe's home. On the way out we stopped at Holland's to let him out. There was no liquor passed around there. I don't know whether he took anything out with him or not. I didn't notice whether he took anything. We didn't stop the car, we slowed up and he stepped out. We had dinner at Joe's place, and I didn't see any liquor there. The party then went straight through from Joe's. Charley Hunter was in the front seat, with me, and one of Joe's boys. Joe and his wife and the two other children were in behind. I didn't see any liquor on the front seat when I got in. Had there been four quarts on the seat next to me in front in that car, I should say I would have seen them if there had been any there, unless there had been a blanket covered over them, I would see them. I didn't see any bottle there at all. On the road we [71], caught up with Louis, Joe's brother, at Ravalli. We went right on and didn't stop at the Mission. Beyond the Mission a car overtook us and got ahead of us and one of the men got out and pulled a gun out and started shooting. I didn't know the man and he didn't say anything that I could hear. I didn't notice him waiving his hands. He started to shoot. I turned out of the road and left the road, not for very long; took another road out and kept going. As to whether anybody in the car at that spot, right there when the man came out and started to shoot tell me to hurry on and get away from there, I will say no, not until after we got out of the road, then somebody said, there was an officer. I couldn't

(Testimony of Philip Hull.)

say who said that; I couldn't say that it was Hunter, and I don't know who said it. As to the words that were used, I couldn't say just what they were. I didn't stop. From there we went to Louis' home on Mud Creek. After passing the man that fired the shots I didn't see any bottles broke. I didn't see Hunter take two bottles and smash them together and throw them out. Didn't see anyone throw out any bottles. There was no mention of bottles of liquor. We went on home to Louis Pablo's place. I didn't see any liquor at all in the car, nor did I see any liquor in the car at all at any place from the time we left Couture's, none of any kind.

While in front of the Montana Bar, when Pritchett and Hunter got out to go back, I didn't see Joe Pablo give them any money. I was sitting with Joe at the time. There was nothing said [72] about money to buy booze; not a word. I was with Joe all that morning in Missoula. Was with him all the time from the time we reached Missoula to the time we went out. We got in the night before, and I slept with him. I didn't see him give Hunter two dollars to go to the Frog Pond to get some booze. I didn't see Hunter with Joe that morning with the party that came up in the car, not that I remember of.

Cross-examination by Mr. WHEELER.

I didn't know at the time I turned off the main road and started across the field that there was liquor in the car at that time, and I didn't testify in this court on the witness-stand that I knew there

(Testimony of Philip Hull.)

was liquor in the car. Someone told me, after I had turned off that road, that it was an officer, but no one said that they were after us. Hunter was sitting on the front seat and the little boy was sitting between us. I didn't see Hunter or anyone else reach out of that car and break bottles. A car doesn't make much noise, but the curtains were down. If that had been done I don't know whether I would have seen it, or not. The reason I turned off that road and started away out of the road was because I thought we were being held up. As to the time of the day, it was about four or five o'clock, about four o'clock, I guess. It was not about two o'clock in the afternoon. At that time we had come from [73] Joe's place and were going to Louis' place on Mud Creek. From the point where we turned off of the main road, if we had followed the main road over to Louis' place it would have taken us about an hour or an hour and a quarter. From such point to Louis' place was about twelve miles, I should think. I don't know how far it is around the other way. We didn't ride in the field, but right on the prairie, and then we ran into this old road through the grass. I saw this man step out in front and holler. I couldn't say I was looking at him at the time. If anybody jumped out in front of the car I saw him. I don't know whether he held up one hand or both hands, or not. I should say there was a team right back of us, about two or three hundred yards. We had passed them just a little before they passed us. I didn't know this was Gil-

(Testimony of Philip Hull.)

beau. I had never seen him before. I have lived on the Reservation practically all of my life, except when I went to school. I went to school there. I have not lived around the Mission since he has been there, although have been around the Mission quite a little during the last four or five years, and I mean I have never seen Gilbeau around the Mission at all. Don't know how big the Mission is. There are two or three hundred people living there.

As to the bottle of whiskey that we stopped to pick up on the way back, I think Carl Thomas had cached it there the day before.

Q. Who was with you when that was cached the day before that? [74]

By Mr. BESANCON.—I object to that as not proper examination.

By the COURT.—Objection overruled.

(Exception taken by the defendant.)

A. Charley Hunter, Lawrence Pritchett, Joe Pablo, and Carl Thomas.

Q. Joe Pablo? A. Yes, sir.

Q. Charley Hunter? A. Yes, sir.

Q. That is the boys that got off of the other car?

A. Yes, sir.

Q. They are the boys that got off of Louis' car?

A. I don't know whether they got off of Louis' car, or not. Charley Hunter brought it there. That day Joe Pablo was riding with me in the front seat. Carl Thomas was in the rear seat. I don't know where they put the booze. I knew it was there along the fence. I knew they had it there,

(Testimony of Philip Hull.)

because they got out. He told me what he was going to do but not Joe and me. Joe and I were riding in the front seat, but he didn't tell anybody, he just stepped out, and left it there. He might have told me he was going to leave it there. As to whether that bottle of booze was drank right up there, I don't know whether it was, or not; I didn't see it afterward. It is not a fact that Joe Pablo was with Lawrence Pritchett, Charley Stevens and Charley Hunter before they ever got into the car at all. Not that morning. [75] They were not standing, talking on the corner, with Charley Stevens, Hunter and Pritchett, altogether. Joe and I were in the car all the time. After I got in I didn't get out of the car. It was about half-past ten when I got into the car, and got out about eleven. Joe was not with Stevens, Hunter and Pritchett on the corner. Joe and I didn't meet Hunter, Pritchett and Stevens down there at all, at least not that I remember of. When we were going out on the car I didn't know that they stopped and drank whiskey as they went along. I don't know whether Joe had a bottle, I was driving and I didn't pay no attention to it.

Q. Didn't you state to Mr. Murphy in the United States Attorney's office that you knew that they were drinking, and passing bottles around in the car?

A. I don't believe they were drinking, I said that they were full, and Mr. Murphy will remember that.

Q. Didn't you say that they were drinking when

(Testimony of Philip Hull.)

you were driving that car along there, yesterday, down in the office.

A. I don't think I did, no, sir.

Redirect Examination by Mr. BESANCON.

I was subpoenaed here as a witness for the prosecution, and the attorneys for the Government examined me carefully yesterday, and they didn't call me this morning.

Recross-examination [76] by Mr. WHEELER.

I was also subpoenaed by the defendant. I was working for Joe at the time. I drove his car to town for him.

Witness excused.

Testimony of R. H. Yaeck, for Defendant.

Whereupon R. H. YAECK, called and sworn as a witness on behalf of the defendant, testified as follows:

Direct Examination by Mr. BESANCON.

My name is R. H. Yaeck. I live at Dixon, and was living there about the 5th of last October. I drove out Gilbeau on a trip that day. I don't recall the exact date, but I did take him out. P. C. Thompson was with us coming out, and going back Mr. Ramsey was with us. We went out from the Mission on towards Ronan. There was a car ahead of us, and we passed a car about five miles this side of Ronan. As we passed, Mr. Gilbeau stepped out on the running board of my car and tried to stop the car ahead. They were just passing and they wouldn't stop and kept on going towards the side

(Testimony of R. H. Yaeck.)

and climbed the embankment, and kept on towards the timber. At that time Mr. Gilbeau pulled out a pistol and started shooting. I have no recollection that Bilbeau yelled to them to stop. I think he did say something, or asked them to stop. I don't recall how many shots were fired, but I think three. I think Mr. Gilbeau made some motion to them to stop when he fired the shots, and I think he spoke about having one shot left. From there we went to [77] Ronan. We didn't follow the other car at that time, but we came back afterwards and we followed what we thought was the trail of that car. I didn't watch this car as it was going off in the distance, not very long; we might have stood there a minute or so. I didn't see any bottles being broken or thrown out from the other car. We went to Ronan, and coming back Mr. Ramsey got in with us at the first bridge this side of Ronan. I think we came back to the point where we passed the other car; I believe it was the same place. From there we followed the trail of what we imagined was the trail. I am not sure that was the trail they took. The country was new to me. I hadn't been there very many times before; I followed directions more than my own information. Gilbeau stated that was the trail and that we would follow it. I don't have any vivid recollection as to what happened on the way, but I think we stopped and examined some broken bottles. I didn't examine them, but think I did see some pieces of broken bottles, don't recollect how many.

(Testimony of R. H. Yaeck.)

Cross-examination by Mr. WHEELER.

Gilbeau got out and stood on the running-board of my car; jumped off and ran along and turned off the road. I think he ran along the side of the car and started to chase their car. I was all the time sitting in my car, driving, and I didn't get out. If he held up his hand at all I think it was while standing [78] on the running-board of my car, as it appears to me now. I haven't any positive recollection about that. When we got back to that place coming back, I didn't get out. Ramsey and Gilbeau did get out. I don't recollect that both got out, but I think Mr. Ramsey did, maybe they did. I couldn't be positive that both got out and looked for broken bottles.

Witness excused.

Testimony of P. C. Thompson, for Defendant.

Whereupon P. C. THOMPSON, called and sworn as a witness on behalf of the defendant, testified as follows:

Direct Examination by Mr. BESANCON.

My name is P. C. Thompson. Have lived in St. Ignatius for about nine years. I was out with Mr. Yaeck last October, but don't remember the date. Mr. Gilbeau was along in Mr. Yaeck's car. When we got out about, I should judge about a mile from where we stopped where that car went past, we passed them. First we passed a wagon, or something, and when we got out there about where our car was coming up to them I saw Mr. Gilbeau get off and get on the running-board and raise up his

(Testimony of P. C. Thompson.)

hand, as far as I remember, and then he jumped off and crawled out. I know that he started to run along with the other car and commenced shooting. The other car went on. Just then we didn't follow the other car. We went to Ronan and came back. On the way back Ramsey got in with us. We came back to the place where there had been some shooting, [79] and from there we followed up to what we thought was the track of the other car. I couldn't swear they were the tracks of the other car. It was a traveled road we followed; it was not a very well traveled road. I didn't notice that anything was picked up along there, nothing whatever.

Cross-examination by Mr. WHEELER.

I don't remember whether I got out of the car the second time when we came back. I saw Ramsey and Gilbeau both get out. I am not so sure about Gilbeau, but I believe he was out; I know Mr. Ramsey went out. If I remember right they went behind the car. As to picking up bottles, they picked up something, I don't know what they did with them. I remember something was picked up, but he didn't show it to me. When we first came along there and passed that other car, Gilbeau held up his hand. He wasn't necessarily along the side of the car, he was probably along behind it. He hollered, but when I heard him holler he was on the running board. I don't remember what he hollered. I don't know whether he hollered to Hull to stop.

Redirect Examination by Mr. BESANCON.

As to this other car, there were no side curtains

(Testimony of P. C. Thompson.)

on it at all, on our car or on Pablo's car. The curtains were down, I mean the side curtains, and I could see people in the car. Answering [80] the Court's question will say, as far as I remember they were down. I could see the driver. Cannot recollect whether that is all I could see or not, I sure must have. I cannot remember who it was, but do remember seeing the driver very well. I knew who the driver was, but don't know who else was in the car. I knew the driver was Phil Hull. I didn't see or notice any women or children.

Recross-examination by Mr. WHEELER.

When the curtains are down there are pieces of isinglass on the curtains so that I could look right through into the car.

Witness excused.

Testimony of Mrs. Joe Pablo, for Defendant.

Whereupon Mrs. JOE PABLO was called and sworn as a witness on behalf of the defendant and testified as follows:

Direct Examination by Mr. BESANCON.

My name is Mrs. Joe Pablo, and I am the wife of the defendant. I remember when my husband came to our place on the 5th of October. Charley Hunter and Phil Hull were with him. They got out and had lunch and we all started out again. As to there being any liquor in the car, I didn't see anything, didn't see any on the front seat or anywhere about the car. I went with them and the children. The curtains were all on the car when we started out.

(Testimony of Mrs. Joe Pablo.)

[81] We couldn't look out. It was raining hard when we left. We overtook Louis on the other side of Ravalli. He got into the car and went on with us. Close to the line by the Reservation there was a car that overtook and passed us, and then I heard some shooting. I couldn't tell how many shots because I was hollering; one of my little girls was half falling out and I was attending to her. I was sitting in the back seat with Joe. I didn't see anybody throw out any liquor, didn't see anything at all like that. I didn't see Hunter take out two bottles and break them nor anything of the sort, because I was busy with my children. From there we went on to Louis' place and stopped at Louis' place. I didn't see any liquor along that road anywhere after that.

Cross-examination by Mr. WHEELER.

I didn't know Mr. Gilbeau, except that I have known him since I have been here. When they turned off the road I was busy with my children. As to whether Hunter might have broken some bottles there and I not have seen it or know about it, I couldn't say, but I think that he did. I couldn't swear that he did or not, but I don't think so because there wasn't any whiskey in the car when we got in.

Redirect Examination by Mr. BESANCON.

I know Blue-eyed Mary's place. She is my grandmother. Mr. and Mrs. Kirkpatrick lived at such place. I was there about the 5th [82] of September, Mrs. Kirkpatrick, myself and my grandmother. Something happened there about liquor. There was a time that Joe, Henry, my father and Lawrence

(Testimony of Mrs. Joe Pablo.)

Pritchett came up there, but I couldn't very well see them. They went up towards the stack, and all that I could see through the window was Lawrence Pritchett handing a bottle to Joe. That is all that I remember there. I didn't go out to the hand game at all. I went to Missoula with Joe on a joy trip that Sunday, about two o'clock. Mrs. Kirkpatrick was with us. We stayed in Missoula about an hour, I think, and then went back. This was after the time I had seen Lawrence passing the bottle to Joe. There was no liquor in the car at all going out, because I never allow it in the car when I am along. Nothing was said about liquor.

Recross-examination by Mr. WHEELER.

I am the sister of Henry Matt who testified here this morning. When Henry Matt and Lawrence Pritchett came over there I saw them come up there, but they went right on towards the stack. Joe was there also. I watched them all the time and saw them have a bottle; saw Lawrence hand a bottle to Joe. He got it some place around the stack.

Witness excused.

Testimony of Mrs. Lucy Kirkpatrick, for Defendant.

Whereupon Mrs. LUCY KIRKPATRICK, called and sworn as a witness on behalf of the defendant, testified as follows: [83]

Direct Examination by Mr. BESANCON.

My name is Lucy Kirkpatrick. I made a trip to Missoula with Joe Pablo and his wife about the 5th of September. I did testify this morning about seeing Lawrence Prichett and the rest drink at the hay-

(Testimony of Mrs. Lucy Kirkpatrick.)

stack. As to who got the bottle, it looked like it was Lawrence Pritchett, he was the closest one towards the house and the nearest to me. I saw him with a bottle because he drank out of it, passed it around, and then threw it down. He was the last one that emptied the bottle. We didn't come to Missoula after that but before that, on the same day. We came to Missoula first, and then the next day this happened at the haystack. There was more than one incident at the haystack; there were four of them, I think. I don't mean there was four times I saw them but there were four men at the stack. I came in with them to Missoula and went back with them. I didn't see any liquor in the car going back, didn't see any at all, and if there was any liquor in there I wouldn't go back with them. I know Lawrence Pritchett, but not very well. My home is in Arlee; I have lived there all of my life. I don't know the general reputation of Lawrence Pritchett for truth and veracity.

Cross-examination by Mr. WHEELER.

I first came into Missoula with Joe and Mrs. Pablo in [84] the car, and then when we came back I took Mrs. Pablo over to her grandmother's, and I don't know whether it was Sunday, or what day it was, but she came with me that night. Joe said he was going home. Mrs. Pablo stayed there all that night with me. Afterwards Joe came back again. I believe it was in the morning. Then Henry Matt and Lawrence Pritchett came back with him, and that was when I saw the whiskey. As to there being any

(Testimony of Mrs. Lucy Kirkpatrick.)

whiskey in the automobile, I couldn't swear whether there was or not, because I didn't see any. Will say that Mrs. Joe Pablo and I are not very good friends. When you asked me this morning about coming to Missoula with them I didn't want to say it because I was a little nervous over it.

Redirect Examination by Mr. BESANCON.

I just made one trip with them to Missoula and have never been around them since. When we came back Joe didn't go to this place where we were camping. He didn't go there at all, but told us he was going home. We had to cross the creek over a little foot-bridge about that wide. Joe didn't cross the creek. Mrs. Pablo and I went on home.

Witness excused.

Testimony of Mrs. Octave Couture, for Defendant.

Whereupon Mrs. OCTAVE COUTURE, called and sworn as a witness on behalf of the defendant, testified as follows:

Direct Examination by Mr. BESANCON. [85]

My name is Mrs. Octave Couture, and I live about two miles east of Arlee and have lived there for about twenty-four years. I remember the 5th of October, when Joe Pablo and the party that was with him in an *automobile* up to our place. I recognized Joe Pablo, saw Phil Hull, the driver, Lawrence Pritchett and Charley Hunter. They stayed there maybe fifteen or twenty minutes. I looked out of the door to see what they were doing, and watched them for about that length of time. I didn't go out to see them. As to their being drunk or sober, they looked

(Testimony of Mrs. Octave Couture.)

as though they had been drinking, and I looked to see if they were drunk or sober. I didn't see them drink there while I was looking at them. I didn't hear any mention made there about it, and I didn't take any interest in it whatever. I know the witness Lawrence Pritchett and have known him four years, maybe a little longer, somewhere along there. As to knowing his general reputation in Arlee and the community around there, for truth and veracity, I do pretty well, and that reputation is bad.

Cross-examination by Mr. WHEELER.

I didn't see my husband take a drink out of a bottle when they drove up there. I was very busy in the kitchen, and I looked out there and saw them, but whether they were drinking whiskey or not I couldn't say. I went to see if there was any liquor because I was afraid. I didn't see any liquor. I was not [86] there very long. I was just on the steps, and I didn't go out there, because it didn't interest me at all.

Witness excused.

Testimony of Archie Grant, for Defendant.

Whereupon ARCHIE GRANT, called and sworn as a witness on behalf of the defendant, testified as follows:

Direct Examination by Mr. BESANCON.

I am living close to Arlee at the present time, and have lived in that community six years. I am acquainted with Lawrence Pritchett and have known him since he came there, I forgot just how long it is,

(Testimony of Archie Grant.)

several years ago. I know his reputation in that community at this time for truth and veracity, and it is bad.

Cross-examination by Mr. WHEELER.

I am friendly with Lawrence Pritchett and always speak to him. As to whether we are not on good terms, will say we are not on bad terms. It is not a fact that I have it in for Lawrence Pritchett because I thought he had been working for the Government and had made some report on me. As to my business, I have been farming there for five or six years, but I am not farming at the present time. I am living in Arlee; not with my wife.

Witness excused.

Testimony of Frank Kirkpatrick, for Defendant.

Whereupon FRANK KIRKPATRICK, called and sworn as a witness on behalf of the defendant, testified as follows. [87]

Direct Examination by Mr. BESANCON.

I live at Arlee and have lived there three years, I think. I know Lawrence Pritchett, and have known him all that time. I know his general reputation in Arlee and in that community for truth and veracity, and that reputation is bad.

Cross-examination by Mr. WHEELER.

I heard that Lawrence had been working for the Government in times past, but didn't know whether it was true, or not, I couldn't say. I have heard that he was, and it is a fact that I have been a little sore at Lawrence Pritchett. I haven't very much use for

(Testimony of Frank Kirkpatrick.)

him; he gave me a little trouble last fall, family trouble. He didn't give me some whiskey down there.

Q. You did not want to testify in this case this morning, did you? A. (No response.)

Witness excused.

Testimony of Mrs. Louis Pablo, for Defendant.

Whereupon Mrs. LOUIS PABLO, called and sworn as a witness on behalf of the defendant, testified as follows:

Direct Examination by Mr. BESANCON.

My name is Mrs. Louis Pablo. I live three and a half miles northwest of Ronan. I was home last October the 5th, and remember Joe Pablo's party coming to my place. The machine stopped [88] at our place and Louis stayed there. They went by and stopped about fifty yards from our place. As to seeing those people that evening and the rest of the day, I just saw them that evening when they got back. I didn't see any liquor at all. When they reached our place every one of them was sober.

No cross-examination.

Witness excused.

Testimony of Joe Pablo, for Defendant (Recalled).

Whereupon JOE PABLO, the defendant, was recalled in his own behalf, and testified further, as follows:

Direct Examination by Mr. BESANCON.

On the 5th of October I came into Missoula, and went out on the 5th. I didn't come into town the day

(Testimony of Joe Pablo.)

before that. I came to town about three o'clock in the afternoon. I left on the 5th, but when you ask me if I had stayed in town, will say I came in on the 4th and went home on the 5th, that is it. We came in the day before, and coming in the machine stopped out near town. I didn't notice what took place. I believe somebody got out, but I didn't pay any attention. I didn't see anybody hide a bottle there that day.

No cross-examination.

Witness excused.

The defendant rests. [89]

REBUTTAL.

Testimony of Harry Pritchett, for Plaintiff (in Rebuttal).

Whereupon HARRY PRITCHETT, called and sworn as a witness on behalf of the plaintiff in rebuttal, testified as follows:

Direct Examination by Mr. WHEELER.

My name is Harry Pritchett. I live at Arlee, and farming. My farm is about a mile from Arlee. This is my father's place. I have lived there about five years. I know the defendant Joe Pablo. I remember when the hand game was going on outside of Arlee, on the river, I saw the defendant, Joe Pablo, there. That was the 5th or 6th of September, I think, somewhere along there. I didn't have any conversation with him at that time to amount to anything. I saw him there.

Q. Well, what did you do, or what did he say to you, if anything?

(Testimony of Harry Pritchett.)

By Mr. BESANCON.—We object to that, because he has already said that he had no talk with him, about anything.

By the COURT.—His judgment of what amounted to anything may not be the same as the jurors'.

By Mr. BESANCON.—We object further upon the ground that it is not a proper impeaching question.

By the COURT.—I know, but it may serve other purposes. You can always contradict the defendant on material matters. The objection will be overruled.

Exception taken by the defendant. [90]

As to what I or Joe did and what he said to me, well, he talked to me a couple of times, maybe, and called me up and gave me a drink. The first time there was nothing much said. There was a party there, and somebody called me, I think it was Joe Pablo. I went back where the bunch was and they passed the bottle around, a pint I think it was, and so I took a drink out of it, and I walked along. As to who passed it around, Joe Pablo did, I am not sure of that point, where it started from. We did take another. As to how we came to go a second time, Joe, he called me himself and gave it to me, I mean Joe Pablo. When he called me off he passed the quart bottle to me and I took a drink out of it. This was a quart bottle of whiskey. I couldn't say for sure whether this was Sunday night, or Monday night. When he called me off the second time, I don't know for sure whether there was anybody pres-

(Testimony of Harry Pritchett.)

ent or not. After that time I saw him again, and took another drink with him after that. This was out of a quart bottle. I don't know whether it was the same bottle, or not. I don't know whether anybody stood by me as I went and took a drink, or not. The third drink was taken about half-way between the hand game and the river. That was about a hundred yards.

Cross-examination by Mr. BESANCON.

I don't mean to say that I went out there alone with Joe the last time. I don't know just who was there. As to whether [91] I can name some that were there, will say that it was dark or near dark that night, and there was a bunch standing around there. I didn't know them at all. I don't know whether they was drinking, or not. This bunch didn't follow Joe and I from the big crowd. As to whether they were there, will say, there was possibly scattered all around, people all around there, we walked past this crowd a little ways. As to whether Joe had a bottle with him when we walked out, I don't know. When he got out there he pulled out a quart bottle of whiskey. As to whether he pulled it out or somebody gave it to him first, I think somebody must have given it to him,—he pulled it out of his pocket and gave it to me. The crowd was around there close to him. As to whether my brother Lawrence was there, I couldn't remember. I don't think he was there then. He was at the hand game, I think. As to seeing any of this drinking party around there, I couldn't say for sure whether I did

(Testimony of Harry Pritchett.)

or didn't now. As to how many bottles I saw there, I saw this pint the first time, and then I got a drink out of the quart bottle twice afterwards; so I am sure I saw at least a pint and a quart. I didn't see any other bottles around there.

Witness excused.

Testimony of Frank Kirkpatrick, for Plaintiff (in Rebuttal).

Whereupon FRANK KIRKPATRICK was called and sworn as a witness on behalf of the plaintiff in rebuttal, and testified as follows:

Direct Examination [92] by Mr. WHEELER.

I don't think I was over at Blue-eyed Mary's place on Sunday morning, September 5th, 1915; I don't remember. If I was over there I would know it, but I don't believe I was there at all. It was on Monday, I think Monday morning, that I was over there with Henry Matt, Lawrence Pritchett and Joe Pablo. I went to Missoula on Sunday afternoon. It was after that time that I was over to Blue-eyed Mary's place.

No cross-examination.

By Mr. WHEELER.—The Government rests.

By Mr. BESANCON.—We wish to call Joe Pablo again for a question or two.

By the COURT.—Very well.

Testimony of Joe Pablo, in His Own Behalf (in Surrebuttal).

Whereupon JOE PABLO was called in his own behalf, in surrebuttal, and testified as follows:

Direct Examination by Mr. BESANCON.

I heard what the witness Harry Pritchett testified just now as to whether at that hand game I called Harry Pritchett away and asked him to leave the bunch of people there and give him a drink, will say that I did not. I did not give Harry Pritchett any drink from any bottle that day. I didn't have any liquor at all myself there on that day. Lawrence Pritchett had some that day. I did not give a drink to Harry Pritchett that day. [93]

Whereupon the defendant rested in surrebuttal.

Witness excused.

This was all the testimony introduced in the case, and thereupon the defendant respectfully requested the Court to give the jury the following requested instructions:

Instructions Requested by Defendant.

1. An accomplice is one involved, either directly or indirectly, in the commission of the offense; and who in some manner aids, assists or participates in the commission of the criminal act.

2. You are instructed as a matter of law, that if you believe from the evidence that the witness Lawrence Pritchett actually committed or assisted or participated in the commission of the offense charged in the indictment, then he is an accomplice.

3. The testimony of accomplices is competent evidence, and the credibility of accomplices is for the jury to consider as they consider the testimony of any other witness; and, while the testimony of an accomplice or accomplices will sustain a verdict when uncorroborated, yet their testimony must be received with great caution and their interest in the result of this action should be seriously considered by you.

4. Although you may find beyond a reasonable doubt that some of the persons riding in the automobile with the defendant had intoxicating liquor concealed upon or about their persons, or in a [94] covered package or packages, while off the reservation, and that the same was conveyed in this manner into the reservation; still this is not sufficient to convict the defendant unless you further find, beyond a reasonable doubt, that the defendant knew, or as a reasonable person should have known, that such liquor was thus being conveyed in his machine and in this way introduced by him into the Flathead Indian Reservation.

Filed and entered April 13, 1916.

GEO. W. SPROULE,

Clerk.

All of which the Court refused, and to which the defendant duly excepted.

Thereupon the counsel for the respective parties proceeded with the arguments to the jury, and during the argument Mr. Wheeler, United States attorney, read to the jury a portion of the testimony of Joe Pablo as transcribed by the stenographer, and which part of the testimony so read by Mr. Wheeler

was substantially the following (and as found at the top of page 91 of the transcript of evidence) :

Q. Well, now, if I had this right, the witness that mentioned it, said that he thought that that was the time, just before you went to the hand game; isn't that it? Before, if I got it right, did you, before going to the hand game, go down to the Chinaman and get a bottle? [95] A. I believe I did, yes.

Whereupon Mr. Besancon objected to the reading of this part of the testimony by the district attorney unless he would also read the questions and answers following and as shown by the record.

By the COURT.—Of course, he has the right to read the testimony. He is not obliged to read it all unless his own sense of what ought to be done suggests it to him.

To which ruling of the Court the defendant then and there duly excepted.

The case was argued to the jury by respective counsel for plaintiff and defendant, and the Court then instructed the jury as follows:

Instructions of Court to Jury.

(Delivered orally by the Court.)

Gentlemen of the Jury: Remember the Court states to you the rules of law; but what is proven in a case by the evidence in the case, by the evidence is entirely for you. The indictment is not evidence. In the three counts the defendant is charged on September 5th, September 6th and on October 5th of last year of having unlawfully introduced whiskey into the Indian country,—the Flathead Indian Reservation. You might find the defendant guilty of all

of the charges or you might acquit him of all; or you might find him guilty of one, and acquit him of the other two, depending entirely upon what is your opinion, your judgment in view of the evidence.

[96]

The law is that anyone who takes whiskey into the Indian country has committed an offense against a law created by Congress, and if he is convicted by a jury, he is to be punished as the law directs.

The dates in the indictment are not very material, and I think you can see that the evidence very closely fits the date set forth therein.

The defendant is presumed to be innocent, and this presumption you keep in mind until you find from the evidence that that presumption of innocence is overcome, and that the defendant is guilty beyond a reasonable doubt, then it is your duty to convict him. Keep before you also the fact that he is to be found guilty only beyond a reasonable doubt; not beyond all doubt, or any doubt, not beyond the possibility of a doubt, because it is possible to doubt anything. There is nothing capable of absolute proof except some problems of science and mathematics.

A reasonable doubt means that there is something in the evidence or something lacking from the evidence that leads you to say, after you have considered it all, that it is reasonable to doubt the guilt of the defendant, that causes you to pause and say you do not have an abiding conviction to a moral certainty that the defendant is guilty as charged; and if, after you have reviewed all of the evidence, that is your conclusion, honestly arrived at, then you have what the

law terms a reasonable doubt, and that presumption [97] of innocence demands the acquittal of the defendant. It is for the Government to prove the guilt of the defendant beyond a reasonable doubt. An accused person is never required to prove that he or she is innocent; but when you come to determine whether the Government has proven the guilt of the defendant beyond a reasonable doubt, you do not look to the Government's evidence alone, but you take it all into consideration, the evidence for the Government, and the evidence for the defendant as well, and compare it together and see where the highest degree of probability lies, what is reasonable and what is not, what in your judgment is proven what conclusion it is proper for your judgment to arrive at, and then you declare the result unhesitatingly by your verdict. You draw your conclusions, you test the credibility of the witnesses in the case, where the truth lies; you determine the credibility of the witnesses by his or her motives, by his or her interest, if any they have. You observe their demeanor upon the witness-stand, whether they appear to you to be frank in an endeavor to aid you to arrive at a correct solution of the case, or whether they appeared to be endeavoring to cover up something, or to conceal the truth. You observe whether the witnesses have contradicted themselves, whether they have a good memory, or a lapse of memory, where it is reasonable that they should forget, and whether they are contradicted by other witnesses, whether what they state now is reasonable or unreasonable, and having in view all of those things that in your judgment ought

to affect the credibility of the [98] witnesses, and you determine all of those things for yourselves. You determine for yourself whether the witnesses are telling the truth, and when the defendant takes the witness-stand himself, remember he is the defendant; that he is charged with a serious offense, and that the consequences are grave to him, if he is convicted, that he has great interest in the case, and you observe his demeanor and also take into consideration what he tells you, whether reasonable or unreasonable in view of all the other evidence; whether he is contradicted, you determine, and whether his interest prompts him to depart from the truth in order to protect himself.

It appears in this case that one of the witnesses for the Government, Hunter, and the defendant, both of them, have heretofore been convicted of this same, or a like offense. That is allowed to go into evidence solely that you might take it into consideration in determining their credibility, and if you believe it impeaches their credibility, that because of it they are not likely to tell the truth, why, it is for you to determine how far it detracts from the weight to be given to their evidence, and it is for you alone.

In this case the evidence is brief and the Court will not review it. The first charge is, with reference to the introduction of liquor at Arlee, and it is a question for you whether the defendant took it there. There is evidence tending to show that he was in possession of liquor, and gave it to some parties. There is also evidence tending to show that he did not; that is to say, there [99] are witnesses that swore he

did have it there, and witnesses, that he himself, at least, did not have it.

Now these things you keep in mind and determine where the truth lies. Lawrence Pritchett swore to you that the defendant had liquor there, whiskey, there at Arlee and gave it to him. That was in the Indian country. Now, with reference to Henry Matt, the court was a little in error in correcting counsel. Henry Matt didn't say really that this defendant gave him whiskey there. What the defendant did say was, that Henry Matt and Pritchett went to the restaurant, to the "Chinks," as he said, I suppose Matt went along, and, he says, the defendant asked the Chinaman for a quart of whiskey; then, he says, they walked off. Whether he meant that the defendant and the Chinaman walked off, or the three of them, I don't know. He says, they came back with a quart of whiskey and they drank it all up, drank it at Blue-eyed Mary's. Now, it will be for you to say what Matt meant by that. I will say, that if it is uncertain and ambiguous or there is any doubt about it, it ought to be resolved in favor of the defendant. Then you have the testimony of Lawrence Pritchett, that the defendant gave him and Matt whiskey; then you have the testimony of the other parties that they took three drinks. If you believe that the defendant had whiskey there, it is for you to infer whether he introduced it into the Indian country or not, whether he brought it there. If he brought it there, if he brought it from Missoula, he certainly introduced it [100] into the Indian country. If you find that he got it at the

Chinaman's, then the law would be that the Chinaman's place is in the Indian country. Blue-eyed Mary's place is within the Indian country. Now, the Indian country; every place in the reservation is Indian country. If a man carries liquor, get liquor into the Indian country, and somebody has already taken it there, if he carries it a substantial distance to some other part of the Indian country, he or she, of course, is introducing it into the latter part of the Indian country, and so would be introducing it into the Indian country under the law. So, if the distance from the Chinaman's to the hand game,—if the defendant got whiskey and carried it to the hand game,—is not in your judgment a sufficient distance to be considered substantial, not a distance to warrant you in finding the defendant guilty, that is an inference for you to draw, and to determine accordingly; it is for you to say whether that would be an introduction into the Indian country. With reference to liquor in the Indian country in the automobile when they were going to the Sanders ranch, this liquor was taken from the Chinaman, that is, there is evidence tending to show it,—if the defendant took it there, and did not know it was there, that is a question for you to determine. But that is not very important other than it might tend to aid you in determining whether the defendant had liquor there at all,—because he denies it. There is not proof that the Sanders ranch is in the Indian country, so we [101] cannot say that going to the Sanders ranch was introducing liquor into the country. This circumstance you can have in mind.

With reference to the other matter, taking the liquor from Missoula by way of Arlee into Ronan, and the departure from the road between Ronan and the Mission you have heard the testimony of Pritchett and Hunter, and the testimony of the defendant as to the giving of the money to Hunter. I will not recite the relations existing between Hunter and the defendant, if any there were. The defendant denies it. Hunter says that the relation of master and servant existed either before or after the taking of that liquor into the reservation. If Hunter was an accomplice of the defendant, Hunter is just as guilty as the defendant, and it is for you to determine whether he is trying to clear his own skirts or swear the defendant into it. I don't say that he has; don't intimate that at all. You observed him on the witness-stand,—that is for you to say. While the Government may prosecute men for a crime, the Government is not bound to prosecute them all, or prosecute them all at the same time. You understand the contest that is going on in society between the element breaking the law, and the element that is observing the law. You must take into consideration the fact that the Government has a right to call one party, or two parties, who have committed a crime, to testify against the other,—and that is the situation here. Hunter is possibly as guilty as the other defendant, but the Government has called him in to aid it in the prosecution. Sometimes it is as important to have the one as the [102] other; but society has the right to the statement of one against the other; and you must keep that in view. You must also

view the testimony of an accomplice with caution, see whether he is corroborated or not; see whether his statement is reasonable. That is all for you to determine.

As far as Lawrence Pritchett is concerned, I don't see from this evidence that he was an accomplice. The evidence is that Hunter bought the liquor. The fact that Pritchett stood by, taking no part in it, would not make him an accomplice. You have heard the defendant say that he did not know that this liquor was put in the automobile, took no part in it. The law is, if this was the defendant's liquor carried on to the reservation, of course, he is guilty as charged. But if it was not his liquor, he would not be guilty unless he knew it was going to the reservation, and knew it was taken on there, and you would judge that by the facts and circumstances in the case. Certainly, if that was Hunter's liquor, and this defendant did not know anything about it, he is absolutely guiltless of that part of it, and at that particular time, on the 6th of October. But if he knew that Hunter had four or five quarts of whiskey in his auto, drinking it up on the road before they got to the reservation, why then, the natural and reasonable inference was that he knew he was going to the reservation, because he was taking Hunter along to the reservation. That is for you to determine. You have heard the testimony with reference to what happened when [103] Gilbeau stopped them. Now, the inference to be drawn from that is, that if an accused person is about to be held up by an officer, and he believes he is going

to be held up, you have the right to take it into consideration, the same as the other evidence in the case. But, if he satisfactorily explains to you, and tells you, and causes you to believe that he imagined he was going to be held up by a highwayman, why, the act of fleeing would not be a fact from which you ought to infer guilt. That is a question, whether he fled to get away, to destroy the evidence, or whether he did not have the liquor at all. That is for you to determine.

There is one other matter, character. The character of Lawrence Pritchett was impeached. Three witnesses testified in the community in which he lived that his reputation for truthfulness is bad. Now, you have that in mind, and you determine for yourselves, in view of all the evidence, what his reputation was, and how far he told the truth, and also look to that to see whether he was telling the truth. A man's reputation is a priceless possession. If it is a good reputation for truthfulness, it goes to the weight of his testimony. A bad reputation of a witness, it seems to me, ought to detract from the weight of his testimony; unless you believe that when he is put on the witness-stand, and under oath, he will tell the truth though he might lie to his neighbors, and have a reputation for untruthfulness. As I told you before, you are the exclusive judges of the credibility of the witness, and [104] the weight to be given to all of the testimony.

Gentlemen, the case is for you. When you retire to your jury-room, you will select one of your number as foreman, and proceed to a verdict. The

Court will conclude as it began, the defendant is presumed to be innocent, and unless you find from the evidence that he is guilty beyond a reasonable doubt, you will acquit him. Are there any exceptions?

By Mr. BESANCON.—May we have an exception to the failure of the Court to give defendant's proposed instructions 1 to 4, both inclusive.

By the COURT.—Very well, the instructions will be filed, and the exception will be noted.

Thereupon the jury retired, and subsequently returned into court the following verdict:

Verdict.

We, the jury in the above-entitled case, find the defendant, Joe Pablo, guilty in the manner and form as charged in the indictment on Count Three thereof, and not guilty on Counts One and Two.

H. H. MONTGOMERY,

Foreman.

And thereafter, on the 17th day of April, 1916, and before the sentence of the court, the defendant made and filed a Motion in Arrest of Judgment, which said motion is as follows: [105]

(Title of Court.)

(Title of Cause.)

Motion in Arrest of Judgment.

Now comes the defendant, Joseph Pablo, in his own proper person, the Court being about to pronounce sentence and judgment, upon the verdict of the jury returned into court in this cause, and moves the Court to arrest the judgment upon the third count of the indictment upon which this defendant

was found guilty by the jury, and assigns as reasons why the judgment should be arrested the following, to wit:

1. That the evidence was insufficient to warrant the jury in finding the defendant guilty upon the third count of the indictment.

2. That the Court erred in failing to instruct the jury to acquit the defendant upon the third count of the indictment.

3. That the evidence does not prove nor tend to prove that the defendant knowingly conveyed whiskey or other intoxicating liquor in his automobile into the Flathead Indian Reservation or from place to place within such reservation.

4. That the evidence does not prove nor tend to prove that the bottles and liquor testified as being in the automobile at certain points within the reservation was the same or parts of the same that other evidence on the part of the Government tended to prove was in the automobile when it left Missoula or in it at any [106] place while the same was off the reservation and on the same trip.

5. That the evidence does not prove nor tend to prove that any whiskey or intoxicating liquor such as described in the indictment, owned by the defendant or obtained by him, was by him knowingly introduced by him into the Flathead Indian Reservation.

JOSEPH PABLO,
Defendant.

JOHN P. SWEE,
A. BESANCON,
Attorneys for Defendant.

Service of the foregoing acknowledged and copy received this 17th day of April, 1916.

B. K. WHEELER,
United States Attorney.

Filed April 17, 1916. Geo. W. Sproule, Clerk.

This motion in arrest of judgment being submitted to the Court and urged by the defendant and on said date, to wit, April 17th, 1916, the Court ordered that said motion be, and the same was denied.

To which ruling of the Court the defendant then and there duly excepted, and his exception was noted. [107]

Thereafter, on the 17th day of April, 1916, the Court passed sentence upon the defendant and entered a judgment and order adjudging that the defendant, Joseph Pablo, be confined and imprisoned in the county jail of Missoula County, Montana, for the term of seventy-five days and that he pay a fine of one hundred dollars and costs, and that the usual order be made relative to such fine and costs; and to which judgment and sentence of the court the defendant then and there duly excepted.

Thereafter and at the time stated herein, the defendant interposed a motion for new trial, the same being in words and figures following, to wit:

(Title of Court.)

(Title of Cause.)

Motion for New Trial.

Comes now the defendant, Joseph Pablo, and moves the court to set aside the verdict of the jury

finding him guilty on the third count of the indictment against him and to grant him a new trial herein, for the following reasons, to wit:

1. That the evidence is insufficient to warrant the jury in finding the defendant guilty on the third count of the indictment.

2. That the Court erred in failing to instruct the jury to acquit the defendant.

3. That the verdict is contrary to law and the evidence. [108]

4. That the jury, after this cause had been submitted to them and after retiring to deliberate upon their verdict, separated and disbanded and spent a large part of the night separate and apart from one another, and this before they had agreed upon a verdict and without leave of the Court and contrary to the express directions of the court, and after having so disbanded and separated again in the morning assembled together and then reached and agreed on the verdict submitted.

5. That the Court erred in refusing to give the defendant's instructions numbered 1 to 4, both inclusive, and as requested by him in writing.

6. The Court erred in holding that the evidence was sufficient to warrant the jury in finding the defendant guilty.

7. The Court erred in overruling the defendant's motion to arrest judgment.

8. The Court erred in passing sentence upon the defendant.

9. Errors in law occurring at and during the pro-

ceedings of the trial and excepted to by the defendant.

Said motion is based upon all the papers, pleadings and files herein, upon affidavits to be filed before the hearing of this motion for a new trial, and upon a bill of exceptions to be served and filed for allowance within the time allowed by the court.

Dated April 17th, 1916. [109]

A. BESANCON,

JOHN P. SWEE,

Attorneys for Defendant.

Service of the foregoing Motion for New Trial and receipt of copy accepted this 17th day of April, 1916.

B. K. WHEELER,

United States Attorney.

By FRANK WOODY,

Assistant.

Filed April 17th, 1916. Geo. W. Sproule, Clerk.

On the same day, to wit, April 17, 1916, on the filing of a written stipulation by and between the United States attorney and the attorneys for the defendant and requesting the Court therefor, the Court granted the defendant thirty days additional to the statutory time in which to prepare, serve and file for allowance a bill of exceptions in this case.

Order Settling and Allowing Bill of Exceptions.

AND NOW, in furtherance of justice and that right may be done, the defendant, Joseph Pablo, tenders and presents the foregoing as his Bill of Exceptions in this case to the action of the Court, and prays that the same may be settled and allowed

and signed and sealed by the Court and made a part of the record; and [110] the same is accordingly done this the 30 day of June, 1916.

BOURQUIN,
District Judge.

Service of the foregoing Bill of Exceptions acknowledged and copy received this 25 day of May, 1916.

B. K. WHEELER,
United States District Attorney.
By FRANK WOODY.

Received by the clerk for delivery to the court this 25 day of May, 1916.

GEO. W. SPROULE,
Clerk United States District Court.
By Harry H. Walker,
Deputy.

Filed this 30th day of June, 1916. Geo. W. Sproule, Clerk United States District Court. [111]

Thereafter, on October 2, 1916, Defendant's Assignment of Errors was duly filed herein, in the words and figures following, to wit: [112]

*In the District Court of the United States, for the
District of Montana.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH PABLO,

Defendant.

Assignment of Errors.

The defendant in this action, in connection with his petition for a writ of error, and after the denial of his motion for a new trial, specifies and makes the following assignments of error, which he avers exist.

1. The Court erred in admitting certain evidence over the defendant's objections thereto and excluding certain evidence excepted to by the defendant at the time of the trial, as follows, to wit:

2. The Court erred in allowing the witness Charles Hunter to testify, and in overruling the objections of the defendant on the ground that said Hunter had been convicted of a felony and in accepting the telegram as evidence that said witness had been pardoned and restored to citizenship.

3. The Court erred in allowing the witness Andrew Gilbeau to testify relative to the kind of bottles which he picked up and the particular labels upon the same and this without requiring the said witness to produce the said bottles and labels or account for them.

4. The Court erred in allowing the following question to be asked of the witness Philip Hull and answered on cross-examination:

Q. Who was with you when that was cached the day before that?

5. The Court erred in allowing the following question to be asked the witness Harry Pritchett and answered:

Q. Well, what did you do or what did he say to you, if anything? [113]

6. The Court erred in permitting the United States attorney in his argument to the jury to read to them a portion of the testimony of Joe Pablo as transcribed by the stenographer, and which part of the testimony so read by said attorney was substantially the following:

Q. Well, now, if I had this right, the witness that mentioned it said that he thought that that was the time, just before you went to the hand game; isn't that it? Before, if I got it right. Did you, before going to the hand game, go down to the Chinaman and get a bottle?

A. I believe I did, yes.

And this without requesting said district attorney to read the questions and answers following the above and of said witness and as shown by the record.

7. The Court erred in refusing to give to the jury the following instruction requested by the defendant:

An accomplice is one involved, either directly or indirectly, in the commission of the offense; and who in some manner aids, assists or participates in the commission of the criminal act.

8. The Court erred in refusing to give to the jury the following instruction requested by the defendant:

You are instructed as a matter of law, that if you believe from the evidence that the witness Lawrence Pritchett actually committed or assisted or participated in the commission of the offense charged in the indictment, then he is an accomplice.

9. The Court erred in refusing to give to the jury the following instruction requested by the defendant:

The testimony of accomplices is competent evidence, and the credibility of accomplices is for the jury to consider as they consider the testimony of any other witness; and, while the testimony of an accomplice or accomplices will sustain a verdict when uncorroborated, yet their testimony must be received with great caution and their interest in the result of this action should be seriously considered by you.

10. The Court erred in refusing to give to the jury the following instruction requested by the defendant: [114]

Although you may find beyond a reasonable doubt that some of the persons riding in the automobile with the defendant had intoxicating liquor concealed upon or about their persons, or in a covered package or packages, while off the reservation, and that the same was conveyed in this manner into the reservation; still this not sufficient to convict the defendant unless you further find, beyond a reasonable doubt, that the defendant knew, or as a reasonable person should have known, that such liquor was thus being conveyed in his machine and in this way introduced by him into the Flathead Indian Reservation.

11. In connection with the Court's refusal to give the defendant's proposed instructions relative to the witness Lawrence Pritchett being an accomplice, the Court further erred in instructing the jury, in re-

gard to said witness Lawrence Pritchett, in the following language, to wit:

“As far as Lawrence Pritchett is concerned, I don’t see from this evidence that he was an accomplice. The evidence is that Hunter bought the liquor. The fact that Pritchett stood by, taking no part in it, would not make him an accomplice.”

12. The Court erred in holding the evidence sufficient to warrant the jury in finding the defendant guilty.

13. The Court erred in denying the motion of the defendant in arrest of judgment.

14. The Court erred in passing sentence upon the defendant.

15. The Court erred in overruling the defendant’s motion for a new trial.

Dated July 7th, 1916.

JOHN P. SWEE,

(By A. B.)

A. BESANCON,

Attorneys for Defendant.

In the District Court of the United States, for the District of Montana. No. ——. United States of America, Plaintiff, vs. Joseph Pablo, Defendant. Assignments of Error. Filed June —, 1916. ———, Clerk. Albert Besancon and John P. Swee, Attorneys for Defendant. Filed Oct. 2, 1916. Geo. W. Sproule, Clerk. [115]

Thereafter, on Oct. 2, 1916, defendant filed his Petition for Writ of Error herein, in the words and figures following, to wit: . [116]

*In the District Court of the United States, for the
District of Montana.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH PABLO,

Defendant.

Petition for Writ of Error.

Now comes the defendant, Joseph Pablo, and petitions this Court for a writ of error herein, and says:

That on or about the 17th day of April, 1916, the above-named court entered a judgment herein against the defendant, wherein and whereby the defendant was sentenced to be confined and imprisoned in the county jail of Missoula County, Montana, for a term of seventy-five days and to pay a fine of One Hundred Dollars, and costs taxed at \$294.10, for the alleged offense of introducing a large quantity of spirituous and intoxicating liquor into the Flathead Indian Reservation within the State of Montana and district of Montana. That in said judgment and the proceedings had prior thereto in this cause certain errors were committed to the prejudice of this defendant, all of which more fully and in detail appear from and in the assignment of errors which is filed with this petition.

Wherefore, this defendant prays that a writ of error may issue in this behalf out of the United States Circuit Court of Appeals for the Ninth Circuit for the correction of the errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, will be sent to the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California.

Dated July 8th, 1916.

JOHN P. SWEE and
A. BESANCON,
Attorneys for Defendant.

In the District Court of the United States for the District of Montana, No. 2732. United States of America, Plaintiff, vs. Joseph Pablo, Defendant. Petition for Writ of Error. Filed Oct. 2d, 1916. Geo. W. Sproule, Clerk. Albert Besancon and John P. Swee, Attorneys for Defendant. [117]

Thereafter, on October 2, 1916, an Order Allowing Writ of Error was duly filed and entered herein, in the words and figures following, to wit: [118]

*In the District Court of the United States, for the
District of Montana.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH PABLO,

Defendant.

Order Allowing Writ of Error.

On this 2d day of October, 1916, comes the defendant, Joseph Pablo, by his attorney and files herein and presents to the court his petition praying for the allowance of a writ of error and his assignment of errors intended to be urged by them and praying also that a transcript of the record, proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be presented in the United States Circuit Court of Appeals, Ninth Circuit, and such other and further proceedings may be had as are proper in the premises.

In consideration whereof the Court does allow the writ of error upon the defendant giving bond according to law, in the sum of five hundred dollars (\$500.00), which will operate as a supersedeas bond.

GEO. M. BOURQUIN,

District Judge.

In the District Court of the United States for the District of Montana. No. 2732. United States of America, Plaintiff, vs. Joseph Pablo, Defendant. Order Allowing Writ of Error. Filed and entered Oct. 2, 1916. Geo. W. Sproule, Clerk. Albert Besancon and John P. Swee, Attorneys for Defendant.

[119]

Thereafter, on October 5, 1916, a Bond on Writ of Error was filed herein, in the words and figures following, to wit:

*In the District Court of the United States, for the
District of Montana.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH PABLO,

Defendant.

Appearance Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS: That we, Joseph Pablo as principal, and Andrew J. Brower and Addison M. Sterling, as sureties, are held and firmly bound unto the United States of America in the full and just sum of Five Hundred Dollars (\$500), to be paid to the said United States of America; to which payment, well and truly to be made, we bind ourselves, our and each of our executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 3d day of Oct. in the year of our Lord one thousand nine hundred and sixteen.

Whereas, lately at the term held in April, 1916, of the District Court of the United States for the District of Montana, in a suit pending in said court between the United States of America, plaintiff, and Joseph Pablo, defendant, a judgment and sentence was rendered against the said Joseph Pablo; and

said Joseph Pablo has obtained a writ of error from the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment and sentence in the aforesaid suit and a Citation directed to the United States of America citing and admonishing the United States of America to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit at the city of San Francisco, California, sixty days from and after the date of said citation, and which citation has been duly served:
[120]

Now, the condition of the above obligation is such that if the said Joseph Pablo shall appear in the United States Circuit Court of Appeals for the Ninth Circuit on the first day of the next term thereof to be held at the city of San Francisco, within sixty days from the 5th day of October, 1916, and from day to day thereafter during said term and from term to term and from time to time, until finally discharged therefrom, and shall abide and obey all orders made by the said United States Circuit Court of Appeals for the Ninth Circuit in said cause and shall surrender himself in execution of the judgment and sentence appealed from as said Court may direct if the judgment and sentence of the said District Court against him shall be affirmed by such Circuit Court of Appeals for the Ninth Circuit, then the obligation to be void; else to remain in full force, virtue and effect.

JOE PABLO. (Seal)

ANDREW J. BROWER. (Seal)

ADDISON M. STERLING. (Seal)

State of Montana,
County of Missoula,—ss.

Andrew J. Brower and Addison M. Sterling, being duly sworn, each for himself says: that he is a resident of the county of Missoula and State of Montana and is a householder and freeholder therein, and that he is worth double the amount stated in the foregoing bond, in property in said State, over and above all his debts and liabilities and exclusive of property exempt by law from execution in the State of Montana.

ANDREW J. BROWER,
ADDISON M. STERLING.

Subscribed and sworn to before me this 3d day of October, 1916.

[Seal] JOHN P. SWEE,
Notary Public for the State of Montana, Residing at
Ronan, Montana.

My commission expires Dec. 19th, 1917.

Approved Oct. 5th, 1916.

BOURQUIN,

Judge U. S. Dist. Ct. for the District of Montana.
Filed Oct. 5, 1916. Geo. W. Sproule, Clerk. [121]

Thereafter, on the 5th day of October, 1916, a Writ of Error was duly issued herein, which said writ is hereto attached and is in the words and figures following, to wit: [122]

*In the District Court of the United States, for the
District of Montana.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH PABLO,

Defendant.

Writ of Error.

The United States of America,—ss.

The President of the United States of America, to
the Judge of the District Court of the United
States for the District of Montana, GREET-
INGS:

Because of the records and proceedings and also of the rendition of judgment and the sentence of the Court wherein the defendant, Joseph Pablo, was sentenced to be imprisoned in the county jail of Missoula County, Montana, and at Missoula, Montana, for a period of seventy-five days and to pay a fine of One Hundred Dollars and costs, for the crime charged of introducing a large quantity of spirituous and intoxicating liquor, commonly called whiskey, into the Flathead Indian reservation within the State and District of Montana and in violation of the statutes of the United States so made and provided, a manifest error has happened to the great

Witness the Hon. EDWARD D. WHITE, Chief Justice of the United States, this 5th day of October, in the year of our Lord one thousand nine hundred sixteen and of the independence of the United States the one hundred and forty-first.

[Seal] GEO. W. SPROULE,

The above writ of error is hereby allowed by
_____, District Judge.

GEO. M. BOURQUIN.

Due service of the above writ admitted and copy received at Helena, Montana, Oct. 5, 1916.

BURTON K. WHEELER,
United States Attorney for the District of Montana.

Answer of Court to Writ of Error.

The answer of the Hon. GEO. M. BOURQUIN, the United States District Judge for the District of Montana, to the foregoing writ:

The record and proceedings whereof mention is made, with all things touching the same, I certify under the seal of the said District Court to the Circuit Court of Appeals for the Ninth Circuit, within mentioned, at the day and place within contained, in a certain schedule to this writ annexed, as within I am commanded.

By the Court.

[Seal]

GEO. W. SPROULE,

Clerk of the District Court of the United States for the District of Montana.

By C. R. Garlow,

Deputy,

No. 2732. In the District Court of the United States for the District of Montana. United States of America, Plaintiff, vs. Joseph Pablo, Defendant. Writ of Error. Filed July —, 1916. —, Clerk. [124]

[Endorsed]: No. 2732. In the District Court of the United States, for the District of Montana. United States of America, Plaintiff, vs. Joseph Pablo, Defendant. Writ of Error and Answer of Court to Same. Filed October 5, 1916. Geo. W. Sproule, Clerk. [125]

Thereafter, on October 5, 1916, a Citation was duly issued herein, which said Citation is hereto attached and is in the words and figures following, to wit:
[126]

*In the District Court of the United States, for the
District of Montana.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH PABLO,

Defendant.

Citation on Writ of Error.

The United States of America,—ss.

To Hon. T. W. GREGORY, Attorney General of the
United States, and to B. K. WHEELER,
United States District Attorney for the District
of Montana, and to the United States of
America:

YOU ARE HEREBY NOTIFIED AND ADMONISHED to be and appear at the Circuit Court of Appeals for the Ninth Circuit to be holden at the City of San Francisco, State of California, thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office in the District Court of the United States for the District of Montana, wherein the United States of America is plaintiff and Joseph Pablo is defendant, to show cause then and there why judgment and sentence of the Court rendered against said defendant as in such writ of error mentioned should not be corrected and speedy justice be

done to the defendant Joseph Pablo in that behalf.

Given under my hand in the City of Helena in the District of Montana above named this the 5th day of Oct., A. D. 1916.

BOURQUIN,

Judge of the District Court of the United States for the District of Montana.

Due service of the above-named citation is hereby admitted as also the receipt of a copy thereof, at Helena, Montana, Oct. 5, 1916.

BURTON K. WHEELER,

United States Attorney, District of Montana. [127]

[Endorsed]: No. 2732. In the District Court of the United States, for the District of Montana. United States of America, Plaintiff, vs. Joseph Pablo, Defendant. Citation. Filed Oct. 5, 1916. Geo. W. Sproule, Clerk. [128]

**Certificate of Clerk U. S. District Court to
Transcript of Record.**

United States of America,
District of Montana,—ss.

I, Geo. W. Sproule, Clerk of the United States District Court for the District of Montana, do hereby certify and return to the Honorable, The United States Circuit Court of Appeals for the Ninth Circuit, that the foregoing volume, consisting of 129 pages, numbered consecutively from 1 to 129, inclusive, is a full, true and correct transcript of the pleadings, process, orders, verdict and judgment, and all other proceedings had in said cause, and of

the whole thereof, as appears from the original records and files of said court in my custody as such clerk; and I do further certify and return that I have annexed to said transcript and included within said pages the original Writ of Error and Citation issued in said cause.

I further certify that the costs of the transcript of record amount to the sum of Forty-five and 55/100 Dollars, and have been paid by plaintiff in error.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court, at Helena, Montana, this 20th day of October, A. D. 1916.

[Seal]

GEO. W. SPROULE,

Clerk.

By C. R. Garlow,

Deputy. [129]

[Endorsed]: No. 2873. United States Circuit Court of Appeals for the Ninth Circuit. Joseph Pablo, Plaintiff in Error, vs. The United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the District of Montana.

Filed November 3, 1916.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,

Deputy Clerk.